

BEFORE THE PLANNING & ZONING COMMISSION

TOWN OF MILTON

MILTON, DELAWARE

PLANNING & ZONING COMMISSION )  
 )  
FEBRUARY 20, 2007 )

BEFORE :

MS. LINDA ROGERS, CHAIRPERSON,  
MR. DEAN SHERMAN, MR. BILL BRIERLY,  
MR. TED KANAKOS, MR. MICHAEL FILICKO,  
MR. GENE STEELE, MS. LOUISE FREY,  
MS. GINNY WEEKS, MS. BERNICE EDWARDS.

ALSO PRESENT:

JOHN BRADY, ESQUIRE  
Attorney for the Town of Milton.

MR. ROBIN DAVIS

MR. BOB KERR

ANTHONY REPORTING  
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Dover, Delaware 19903  
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1                   THE CHAIRPERSON: Ready? Is everyone ready?  
2     Okay. We will open tonight's meeting of the Milton  
3     Planning & Zoning Commission.

4                   The first item on the agenda is a public  
5     hearing for the application of Sonja Ayers -- I hope I  
6     said that correctly -- for a conditional use permit to  
7     operate a daycare center at 329 Mulberry Street, further  
8     identified by Sussex County Tax Map and Parcel  
9     2-35-14.19-49.00, 61.00, and 62.00. The property is  
10    located in an R-1 Zoning District.

11                  Is there anyone present on behalf of this  
12    application? And if so, go to the mike and identify  
13    yourself for the records.

14                  MS. WEEKS: Madam Chairman, I just want to  
15    announce I'll be recusing myself from this, since I live  
16    across the street from the church.

17                  THE CHAIRPERSON: Okay. And Mr. Kerr tore  
18    up the microphone.

19                  UNKNOWN SPEAKER: The light's on.

20                  UNKNOWN SPEAKER: One, two, three.

21                  UNKNOWN SPEAKER: Maybe he's -- oh --

22                  THE CHAIRPERSON: It's working.

23                  UNKNOWN SPEAKER: It's working.

24                  THE CHAIRPERSON: You want to state your

1 name and --

2 MS. SONJA AYERS: My name is Sonja Ayers,  
3 and I'm here tonight to request a conditional use permit  
4 to operate a daycare center at --

5 UNKNOWN SPEAKER: Hello, Ms. Ayers.

6 MS. AYERS: At 329 Mulberry Street.

7 UNKNOWN SPEAKER: Hello, Ms. Ayers. Try  
8 that.

9 UNKNOWN SPEAKER: Got the mike. Talk again.

10 MS. AYERS: My name is Sonja Ayers. I'm  
11 here tonight to request a conditional use permit to  
12 operate a daycare center at 329 Mulberry Street, Milton,  
13 Delaware.

14 THE CHAIRPERSON: Okay.

15 MS. AYERS: What else?

16 THE CHAIRPERSON: Go on. What hours do you  
17 want to operate --

18 MS. AYERS: Oh, okay.

19 THE CHAIRPERSON: -- the number of children  
20 you plan to have, staff, what you plan to do.

21 MS. AYERS: The hours are 7:00 to 5:30 p.m.  
22 I'm not sure how many children I'm going to have,  
23 because the state has to -- they'll make that  
24 determination. They would measure the building from

1 wall to wall. And I can't proceed, you know, with the  
2 application with the state until I get the zoning issue  
3 cleared up.

4 THE CHAIRPERSON: So you intend to use the  
5 facility behind the church? The metal building?

6 MS. AYERS: Yes.

7 THE CHAIRPERSON: Will you be using all of  
8 that building as the daycare or only a part of it?

9 MS. AYERS: All of it, because I would need  
10 the kitchen and the mess rooms.

11 THE CHAIRPERSON: What is your goal for  
12 children? If you could have your optimum of what you  
13 would like, how many do you want to try to have? And if  
14 so, how many staff will you need for that?

15 MS. AYERS: I'm anticipating between 25 and  
16 30, but the staff is determined by the number of  
17 children that I have.

18 THE CHAIRPERSON: And do you know what that  
19 requirement is? How many staff per children?

20 MS. AYERS: It depends on the ages of the  
21 children.

22 THE CHAIRPERSON: You just can't give a  
23 straight answer, can you?

24 MS. AYERS: Because I don't have any

1 straight answers.

2 THE CHAIRPERSON: So your goal is to  
3 hopefully have 20 to 25 children, when and if you could  
4 run it capacity?

5 MS. AYERS: Yes.

6 THE CHAIRPERSON: Does anyone else have any  
7 questions they would like to ask the Applicant?

8 UNKNOWN SPEAKER: I would love for you to  
9 just describe for us and for the official record how the  
10 parking would work and the drop-off and pick-up.

11 MS. AYERS: Well, there is a parking area  
12 behind the church. I guess the parents would bring  
13 their children into the side entrance.

14 Is that correct? Yeah, the pastor here, he  
15 knows more about the church than I do. You want to  
16 address that?

17 UNKNOWN SPEAKER: Okay. Now, we're not sure  
18 it's fair to have a pastor speak for your project here.

19 MS. AYERS: He's the pastor of the church.

20 UNKNOWN SPEAKER: No, I'm teasing you.

21 MS. AYERS: Okay.

22 UNKNOWN SPEAKER: Sir?

23 REVEREND LAMONT HARMON: Question?

24 THE CHAIRPERSON: Do you want to state your

1 name for the record, please?

2 REVEREND LAMONT HARMON: I'm Reverend LaMont  
3 Harmon, pastor of Bethel AME Church at the corner of  
4 Mulberry and Clifton, Milton, Delaware.

5 THE CHAIRPERSON: She plans to use the  
6 church facility in the back for this daycare. And the  
7 question is: Where will drop-off for the children be,  
8 and how will that be arranged?

9 REVEREND HARMON: It would be in the parking  
10 lot. The side door, that is where the street is. But  
11 we have a parking door that opens up to the parking.  
12 And that will be the entrance and exit.

13 UNKNOWN SPEAKER: So there wouldn't be any  
14 pick-up or drop-off on the street?

15 REVEREND HARMON: No, sir, no.

16 UNKNOWN SPEAKER: Okay. They would --  
17 that's good.

18 THE CHAIRPERSON: Does anyone else have any  
19 questions?

20 UNKNOWN SPEAKER: Is there going to be a  
21 play area for the children?

22 MS. AYERS: Yes.

23 UNKNOWN SPEAKER: Is it going to be fenced  
24 off or (unintelligible)?

1 MS. AYERS: Yes. It will be fenced off. We  
2 have to have 75 square feet per child, and it has to be  
3 large enough so that one-fourth of the children can be  
4 out on the playground at one time.

5 UNKNOWN SPEAKER: But with -- I know with  
6 the daycare, it would have to be fenced in. And I know  
7 with the ratio -- what are your ages that you are going  
8 to --

9 MS. AYERS: Well, I know it will be between  
10 zero and 12 years. I plan to do a preschool, but I will  
11 also make a sitter, before- and after-school care.

12 UNKNOWN SPEAKER: Will you be offering any  
13 instruction --

14 MS. AYERS: Yes.

15 UNKNOWN SPEAKER: -- to the pre-schoolers?

16 MS. AYERS: Yes. Because we have to have an  
17 education program, we have to have qualified staff.

18 UNKNOWN SPEAKER: You'll have a curriculum  
19 in place?

20 MS. AYERS: Yes.

21 UNKNOWN SPEAKER: Books and materials and  
22 that sort of thing?

23 MS. AYERS: Yes.

24 UNKNOWN SPEAKER: How much need do you think

1       there is in Milton?

2                   MS. AYERS:   There's a --

3                   UNKNOWN SPEAKER:   It appears to me like  
4       there is, but I don't know.

5                   MS. AYERS:   There's a great need.   And we  
6       are going to be located right across the street from a  
7       school, so I'm hoping that I'll be able to serve some of  
8       those children, as well.

9                   UNKNOWN SPEAKER:   So that would be a  
10      preschool?

11                  MS. AYERS:   Yes.

12                  UNKNOWN SPEAKER:   Okay.

13                  UNKNOWN SPEAKER:   Then -- go ahead.

14                  UNKNOWN SPEAKER:   There will be some who  
15      will come from school, perhaps, and stay with you just  
16      for a couple of hours, until their parents pick them up?

17                  MS. AYERS:   Yes.

18                  UNKNOWN SPEAKER:   And I'm assuming that  
19      somebody would walk them over from the school?

20                  MS. AYERS:   Absolutely, yes.

21                  UNKNOWN SPEAKER:   It sounds like you've done  
22      a good job of looking up, you know, what you have to  
23      have, I mean what kind of clearances and everything.

24                  MS. AYERS:   Thank you.

1 UNKNOWN SPEAKER: That's helpful.

2 UNKNOWN SPEAKER: So you have done a basic  
3 survey of the need that is here in the Milton area?

4 MS. AYERS: I haven't done a survey, no, but  
5 there's always a need for daycare and child care.

6 THE CHAIRPERSON: Do you have experience  
7 operating a daycare?

8 MS. AYERS: I don't have experience. But I  
9 worked for the school for 20 years, and I just -- my  
10 last job was at a preschool.

11 THE CHAIRPERSON: Does anyone else have any  
12 questions?

13 UNKNOWN SPEAKER: Ms. Ayers, if you would,  
14 just --

15 UNKNOWN SPEAKER: I'm sorry.

16 UNKNOWN SPEAKER: Just give me a little more  
17 information, if you would, please. I'm not really  
18 familiar with daycare facilities, and I know -- I  
19 believe you said your hours of operation would be  
20 seven --

21 MS. AYERS: To 5:30.

22 UNKNOWN SPEAKER: Seven to 5:30.

23 MS. AYERS: And it depends on the needs of  
24 the parents. I can -- I would be happy to make an

1 adjustment.

2 UNKNOWN SPEAKER: Right.

3 MS. AYERS: I may have to go earlier or stay  
4 later.

5 UNKNOWN SPEAKER: Okay. So you would not be  
6 planning on being open during the evening hours?

7 MS. AYERS: No.

8 UNKNOWN SPEAKER: Okay. And weekends?

9 MS. AYERS: No.

10 UNKNOWN SPEAKER: And as far as the play  
11 facility outdoors for the children, I understand that  
12 must be fenced in.

13 MS. AYERS: Yes.

14 UNKNOWN SPEAKER: Is there a playground?  
15 Grass? What kind of a facility is there now? And if  
16 there isn't anything, what are you proposing to put in  
17 for the children?

18 MS. AYERS: Well, there isn't anything there  
19 now. But I -- we just got new rules and regulations  
20 from the state, which came out January 1st.

21 UNKNOWN SPEAKER: Okay.

22 MS. AYERS: And in those rules and regs, I  
23 know I have to have a fenced-in area. I have to get  
24 playground equipment that's going to be sturdy, and then

1       there has to be something on the ground to protect the  
2       children from falls or whatever.

3                   UNKNOWN SPEAKER:   Okay.   And is there  
4       asphalt there now, or is there any grass area?

5                   MS. AYERS:   I think it's grass.

6                   UNKNOWN SPEAKER:   Okay.   And is there a  
7       kitchen in the --

8                   MS. AYERS:   Yes.

9                   UNKNOWN SPEAKER:   It's I know we have passed  
10      the kitchen.   It's approved.   It's state-approved.

11                  MS. AYERS:   It's already state-approved.

12                  UNKNOWN SPEAKER:   Okay.

13                  UNKNOWN SPEAKER:   I guess that's what you  
14      were asking.

15                  MS. AYERS:   It's already met the state  
16      requirements.

17                  UNKNOWN SPEAKER:   Yes, the state  
18      requirements.

19                  UNKNOWN SPEAKER:   Do you have a license from  
20      the state?

21                  UNKNOWN SPEAKER:   Yes.

22                  UNKNOWN SPEAKER:   So you have to come before  
23      us before the state will allow you to go any further  
24      with this?

1 MS. AYERS: Yes.

2 UNKNOWN SPEAKER: I see. And I don't know  
3 if this is an appropriate question, as far as granting  
4 permission or not, but I'm just curious. Would you have  
5 something there to accommodate special needs children?

6 MS. AYERS: I'm not sure.

7 UNKNOWN SPEAKER: Okay.

8 MS. AYERS: I don't have anything -- I have  
9 not considered special needs children. And as far --

10 UNKNOWN SPEAKER: I mean like a wheelchair  
11 ramp, if that was --

12 MS. AYERS: Is it already out there?

13 UNKNOWN SPEAKER: That may already be --

14 MS. AYERS: Oh, they do have a ramp. It's  
15 already handicap access. They already have a ramp.

16 UNKNOWN SPEAKER: Okay. All right.

17 UNKNOWN SPEAKER: Well, I very much enjoy  
18 your manner. And certainly, if I were four years old, I  
19 would be glad to go see you every day.

20 MS. AYERS: Thank you.

21 UNKNOWN SPEAKER: That has nothing to do  
22 with land use, mind you, but --

23 MS. AYERS: Okay.

24 THE CHAIRPERSON: Does anyone else have any

1 questions of the Applicant?

2 UNKNOWN SPEAKER: I -- you would have to  
3 come back -- oh, the staffing, we would want to see, and  
4 the qualification. But also, the --

5 MR. BRADY: Commissioner, that would fall to  
6 the Office of Child Care Licensing.

7 UNKNOWN SPEAKER: Okay.

8 MR. BRADY: The Town's approval is required  
9 before it can go to the Office of Child Care Licensing.  
10 The conditions which have not be covered in the public  
11 hearing that you may wish to cover are -- although you  
12 did have the pastor say -- has the church approved this  
13 for use in the building? I guess I could presume it.  
14 But you know, making an explicit record would have the  
15 pastor say, yes, the church has approved this and has  
16 approved the application, and also, to talk about the  
17 requirements that would be required under paragraph  
18 11(1) for the zoning ordinance for conditional uses.

19 REVEREND HARMON: If we support this  
20 (unintelligible).

21 UNKNOWN SPEAKER: Sir?

22 MR. BRADY: Okay. I'm sorry, Pastor. We  
23 have to make a recording of all these, in case somebody  
24 has a question or appeals it so that --

1 UNKNOWN SPEAKER: We put all this out on a  
2 CD at the end of the year for people's entertainment.

3 REVEREND HARMON: Yes. We came before the  
4 Commission Board, and they gave us (unintelligible).

5 THE CHAIRPERSON: Does anyone else have any  
6 questions of the Applicant? Anyone in the audience  
7 would like to speak on behalf of this application?

8 MS. SUSAN FEWELL: I think it's a wonderful  
9 idea.

10 THE CHAIRPERSON: Do you want to identify  
11 yourself?

12 UNKNOWN SPEAKER: I'm sorry.

13 MR. BRADY: I'm sorry. Blame the lawyer.

14 MS. FEWELL: My name is Susan Fewell, and I  
15 live on Mulberry Street. And I think it's a wonderful  
16 idea. I've been here -- I've been here a long time.  
17 And in the last few years, I've noticed that around  
18 town, there are lots of children. And I'm sure there's  
19 a great need for this daycare. And you're a lovely  
20 person to run a daycare in a church setting. I think  
21 it's a great idea.

22 THE CHAIRPERSON: Does anyone else like to  
23 make a comment?

24 UNKNOWN SPEAKER: She's recused herself.

1 MS. WEEKS: I've recused myself. I presume  
2 I can speak as a neighbor, since I live across the  
3 street?

4 MR. BRADY: Not sitting at the table.

5 MS. WEEKS: No. Well, I would have gotten  
6 up, but there were no chairs available.

7 MR. BRADY: You can move your chair into the  
8 audience for this.

9 MS. WEEKS: Since nobody from this Board has  
10 ever recused themselves as long as I have been on it, I  
11 wasn't sure what thing was.

12 I just want to say that the church -- I live  
13 across the street from the church, and you are a fine  
14 neighbor. You're a good neighbor. I would welcome a  
15 daycare center in the area. However, I'm not sure that  
16 I would welcome --

17 UNKNOWN SPEAKER: Ms. Weeks, there's  
18 something wrong with that microphone.

19 MS. WEEKS: I'm not sure that I would  
20 welcome one of 25 or 30 children in a residential area.  
21 Please remember that it is an R-1. And I'm concerned  
22 because Clifton and Reed Street are real tiny. And half  
23 the time I'm going out Clifton onto Union -- the other  
24 day -- I was going out just the other day, and some guy

1     came around -- an older guy, not a young kid -- came  
2     around at a full clip. And if I hadn't honked my horn,  
3     we would have had an accident. And so I'm a little  
4     concerned about the numbers being high.

5             Also, I'm -- I wanted to ask: Where is the  
6     playground going to be located? May I ask the question?

7             MS. AYERS: It would be behind the church.  
8     There's an area on the side of the church.

9             MS. WEEKS: Okay. Not the lot that --

10            MS. AYERS: No.

11            MS. WEEKS: Okay. And I would just ask you  
12     to be very specific, when you pass this, as to the  
13     hours, to make some consideration for the amount of  
14     children.

15            There's one other thing that worries me, and  
16     that is that the house next to mine is sort of like a  
17     boarding house. I guess you guys, years ago, gave it a  
18     conditional use. And it's an extension of Casa  
19     Francisco. And it is not -- they are not -- there's not  
20     somebody supervising the people 24 hours a day. And I  
21     don't know if they are (unintelligible) by the  
22     authorities. And I would just ask you to consider that  
23     when --

24            THE CHAIRPERSON: Which house is it?

1 UNKNOWN SPEAKER: What house is it?

2 MS. WEEKS: The house directly next door to  
3 me, they have about five or -- five people, four or five  
4 people from Casa Francisco all the time.

5 THE CHAIRPERSON: I'm not aware of any --

6 UNKNOWN SPEAKER: Me either.

7 UNKNOWN SPEAKER: (Unintelligible).

8 MS. WEEKS: They come in the back.

9 THE CHAIRPERSON: I'm not aware of them  
10 getting any special approval. That house, the last time  
11 it was owned by Harvey --

12 UNKNOWN SPEAKER: Yeah.

13 THE CHAIRPERSON: -- wasn't that who it was  
14 owned by?

15 UNKNOWN SPEAKER: Is that the one --

16 THE CHAIRPERSON: I don't know; I'm asking.  
17 I don't know of anything that's been granted for  
18 anything like that.

19 UNKNOWN SPEAKER: The only --

20 MS. WEEKS: Well, I don't know. But I'm --

21 THE CHAIRPERSON: No, I'm just saying --

22 MS. WEEKS: But that's what's there. And  
23 that is, believe me, a worry, because they are not  
24 supervised. You know, they -- the lady of the house

1 owns a shop down near Wal-Mart, and the gentleman of the  
2 house travels a lot. His business is in New England.

3 THE CHAIRPERSON: Is it the white house?

4 MS. WEEKS: Yes. It's the house directly  
5 across from the parking lot --

6 UNKNOWN SPEAKER: Of the church?

7 MS. WEEKS: -- on Clifton street, the one  
8 right next to me. You all know where I live? That big  
9 stand of trees? The house on the other side of the  
10 trees. And they have a series of either rooms or  
11 apartments in the back of the house that they rent out.  
12 And that --

13 UNKNOWN SPEAKER: Well, that's new.

14 MS. WEEKS: That's a concern. But even more  
15 so, this is supposed to be a residential area. So if  
16 the daycare center wants to come, that is fine. But I  
17 would like the numbers kept low for reasons of safety on  
18 the streets. Those are lanes. They are not streets.  
19 You have all traveled them. You know how hard it is  
20 coming around the corners there. Thank you.

21 MS. AYERS: Certainly, if we took our  
22 children out for a walk, they would go by class. And we  
23 couldn't take them all at the same time.

24 THE CHAIRPERSON: Does anyone else have any

1       comments?

2                   MS. MARIAN JONES:   This is four, right?

3                   THE CHAIRPERSON:   Uh-huh, we are still on  
4       four.

5                   MS. MARIAN JONES:   Marian Jones, Behringer  
6       Avenue. I've known Sonja for 30 years. She's always  
7       been this sweet and gentle. I think there is a need in  
8       town, and I hope you will consider this.

9                   UNKNOWN SPEAKER:   Did you get that?

10                  UNKNOWN SPEAKER:   Robin, she's talking to  
11       you.

12                  THE CHAIRPERSON:   Does anyone else have any  
13       comments in favor of this application? Does anyone have  
14       any concerns in opposition to this application? Does  
15       anyone have any comments or questions either way?

16                  UNKNOWN SPEAKER:   I have one question.

17                  THE CHAIRPERSON:   Uh-huh.

18                  UNKNOWN SPEAKER:   Is this going to be for  
19       both sick and well children?

20                  MS. AYERS:   No, just well. But if the  
21       child gets sick while they're there, then we would have  
22       a special -- we have to make special arrangements for  
23       that child. But --

24                  UNKNOWN SPEAKER:   Healthy children.

1 UNKNOWN SPEAKER: That doesn't seem like a  
2 P & Z concern. I don't know, but it doesn't sound --

3 THE CHAIRPERSON: The State would regulate  
4 anything for special needs. And they are going to  
5 regulate any of the regulations for the well-being of  
6 the children.

7 MR. BRADY: The state license requirements  
8 will require a non discriminatory policy. So people who  
9 are disabled, youngsters who are disabled, have to be  
10 given access to being in the facility. With regard to  
11 health conditions, health conditions are clearly  
12 regulated under the appropriate title of the Delaware  
13 Code and the licensing requirements of the Office of  
14 Child Care Licensing. So I believe they would have to  
15 comply with all of those requirements, and they would  
16 control.

17 Your role as Commissioners for Planning &  
18 Zoning would not give you power to regulate on either of  
19 those tuitions.

20 THE CHAIRPERSON: Does anyone else have any  
21 questions? Does anyone on the Board have any other  
22 questions?

23 UNKNOWN SPEAKER: I have just a small  
24 question, which is: Would it be appropriate for the

1 Commissioners to recommend a maximum number of children?  
2 Just a question that I thought of.

3 MR. BRADY: You have been asked for a  
4 conditional use. On a conditional use, you put a  
5 maximum on capacity requirement. I'm trying to talk  
6 loud enough without my microphone. I failed.

7 You can put a requirement on the maximum  
8 occupancy, mindful of the fact that the Fire Marshal's  
9 Office probably has established an occupancy level and  
10 the licensing -- Office of Child Care Licensing has a  
11 ratio between number of children and number of staff.  
12 And they would have to comply with all the requirements  
13 of the Office of Child Care Licensing, which is part of  
14 the Department of Health and Social Services, the State  
15 Fire Marshal's Office. I do not believe there would be  
16 a DelDOT implication here on that issue. But there's a  
17 couple of other issues I shared with Robin, when we get  
18 out of the public hearing that I'll share with the Board  
19 that may have an impact from a recently passed town  
20 ordinance.

21 UNKNOWN SPEAKER: (Unintelligible).

22 UNKNOWN SPEAKER: Probably the only other  
23 small question I have is it does seem to me that -- I  
24 thought Ms. Weeks brought up a couple of interesting

1 points. And it does seem to me that it would be better,  
2 say, for people to come in and out off of Mulberry  
3 rather than Union, because it is true that it's -- turns  
4 are hard there, and some of them are semi blind. And  
5 you know, I don't think we can say anything about that.  
6 But I would recommend to you to think about the  
7 possibility of asking parents to come in and out on  
8 Mulberry.

9 UNKNOWN SPEAKER: I also live very close by.  
10 I'm just -- we're down the street on Union Street from  
11 the location of this. I think this is a win-win for the  
12 community. We have a need here. The presenter  
13 obviously has her feet on the ground. This should work  
14 well for the whole Town of Milton, and I have no problem  
15 with it at all. So we should vote for it.

16 THE CHAIRPERSON: Yes.

17 MS. MARY HUDSON: One of these works.

18 MR. BRADY: That one will work.

19 MS. MARY HUDSON: I'm Mary Hudson. I live  
20 on Union Street. And the good thing about the location  
21 of this church is that it has more than one access, not  
22 just through -- from Union or Mulberry, but also -- is  
23 that Reed Street back there that connects to Broad?

24 UNKNOWN SPEAKER: Yes.

1 UNKNOWN SPEAKER: Uh-huh.

2 MS. HUDSON: So there's more than one way to  
3 skin a cat. If they want to get in, they can come up  
4 Broad, up Reed, go into the back of the parking lot, and  
5 not even go up the other street, if it's going to be  
6 that much of a problem. They could ask the parents to  
7 bring them up Reed Street.

8 The other thing is I would rather see the  
9 children in a daycare than out on the street playing,  
10 because they are -- we have more -- we have a need for  
11 children to have a place to go, if it's after school,  
12 especially across from an elementary, at a safe place to  
13 get off the streets.

14 And the Draper Annex is a good size  
15 facility. And I'm sorry Ginny has a problem with her  
16 neighbors. I didn't know any --

17 MS. WEEKS: I don't have a problem with  
18 them. I just wanted you to know that they are there.

19 MS. HUDSON: Yeah. So I don't know how --

20 MS. WEEKS: I never said I had a problem.

21 MS. HUDSON: I don't know that that should  
22 be -- have affect on this daycare, is what I'm saying,  
23 because they are two separate things. So anyway, I just  
24 wanted to let you know that there are other options for

1 traffic patterns besides going up and down that really  
2 tight zoning.

3 MS. WEEKS: Right.

4 UNKNOWN SPEAKER: But I --

5 UNKNOWN SPEAKER: I might be wrong, but I  
6 thought Mrs. Weeks meant -- I thought Mrs. Weeks meant  
7 that she was concerned for the children.

8 MS. WEEKS: Exactly.

9 UNKNOWN SPEAKER: Yes.

10 UNKNOWN SPEAKER: Oh, okay.

11 MS. WEEKS: I have no problem with what --  
12 if I had a problem with what was going on, you would  
13 have heard about it by now.

14 THE CHAIRPERSON: Okay. Does anyone else  
15 have any comments?

16 UNKNOWN SPEAKER: I just want to say with --  
17 if there is a possibility that -- if the kids have to  
18 come off Mulberry Street, there will be instructions  
19 from the drop-off point, correct?

20 MS. AYERS: Well, we will take care of that  
21 when we meet with the parents, and we'll let them know  
22 where they can -- where they should put their --  
23 drop-off the children and should pick them up. It would  
24 be part of our parent orientation.

1 UNKNOWN SPEAKER: And I think it's an  
2 excellent -- hopefully, the daycare center, because  
3 there is a need. We need to have a place where the kids  
4 will be able to go, and it would be a safe haven.

5 UNKNOWN SPEAKER: Well, if you look --

6 UNKNOWN SPEAKER: Plus, an education  
7 (unintelligible).

8 UNKNOWN SPEAKER: I'm sorry. I'm sorry. I  
9 didn't mean to interrupt you.

10 UNKNOWN SPEAKER: I said, plus an education;  
11 that's the key.

12 UNKNOWN SPEAKER: Yes, yes.

13 UNKNOWN SPEAKER: It would be more than  
14 that.

15 UNKNOWN SPEAKER: Yes, yes. That's really  
16 important.

17 UNKNOWN SPEAKER: That's the key.

18 UNKNOWN SPEAKER: If you look around the  
19 Town of Milton, there is practically nothing here for  
20 children, for our teenagers or anything else. There  
21 aren't any basketball courts. There aren't anything  
22 that's feasible to be used. And this is a step in the  
23 right direction.

24 MS. AYERS: Thank you.

1                   THE CHAIRPERSON: Does anyone else have any  
2       comments? If not, we will entertain a motion to close  
3       the public hearing. Yes.

4                   MS. FEWELL: Only to wonder if a solution  
5       might be or at least a consideration would be to refer  
6       it on and consider making that street one way.

7                   THE CHAIRPERSON: We don't have the  
8       authority to do that.

9                   MS. FEWELL: I understand, but I mean just a  
10      suggestion or a nudge. I was just thinking back there.  
11      Thank you.

12                  UNKNOWN SPEAKER: And that's a suggestion  
13      that you all -- that you, yourself, could also make to  
14      the Streets Committee.

15                  UNKNOWN SPEAKER: Well, I mean to interrupt  
16      the (unintelligible). But I would be for this. But I'm  
17      just back there thinking if there would -- possibly  
18      reduce that oncoming, off coming, because you want to do  
19      it from the side, right? Into the parking lot? And the  
20      kids are little, so you really want your parents to  
21      park, take your kids in, come back out.

22                  THE CHAIRPERSON: Does anyone else have any  
23      comments? If not, we will entertain a motion -- Okay.

24                  MR. BRADY: Ms. Ayers said that she probably

1     has -- Can you mark on this copy of the plan that was  
2     introduced, where the proposed fenced-in outdoor  
3     reaction would be so as to preserve the record? Because  
4     I'm unclear from what is behind the church, which I  
5     think your answer was, just so I can have a full and  
6     adequate record? If you could just mark it on there and  
7     initial it, and we will make that part of the record.

8                     (Unintelligible).

9                     UNKNOWN SPEAKER: This comes here  
10     (unintelligible), and this is the property here.

11                    (Unintelligible).

12                    MR. BRADY: I'm just trying to make a good  
13     record.

14                    UNKNOWN SPEAKER: (Unintelligible).

15                    MR. BRADY: It would be taking some of the  
16     parking spaces?

17                    UNKNOWN SPEAKER: That's (unintelligible),  
18     so these are the parking lots.

19                    MR. BRADY: Okay.

20                    THE CHAIRPERSON: There are two options as  
21     to where it can go? Is that what you are saying?

22                    UNKNOWN SPEAKER: Yes. (Unintelligible).

23                    (Unintelligible).

24                    MR. BRADY: Okay. All right.

1 UNKNOWN SPEAKER: People, within 200 feet of  
2 the --

3 THE CHAIRPERSON: Where is the other option  
4 that you have? Where did he go?

5 (Unintelligible).

6 UNKNOWN SPEAKER: Ma'am, the other lot is  
7 not adjacent to the property of the church.

8 (Unintelligible).

9 UNKNOWN SPEAKER: Pastor, do you mean the  
10 lot that is near Amy's house on the other side of the  
11 house -- the house in between the church and the lot,  
12 which means that the playground would be separated from  
13 the church. And by way of procedure, I doubt if the  
14 people that live within 200 feet of that lot got an  
15 announcement of this meeting.

16 (Unintelligible).

17 MR. BRADY: On the second -- on the second  
18 map, it would be marked as parcel number 59 or -- yeah,  
19 59.

20 THE CHAIRPERSON: Well, that would be an  
21 off- premise location.

22 MR. BRADY: That's correct.

23 THE CHAIRPERSON: So that might require  
24 something in addition to this application --

1 MR. BRADY: Yes, it would.

2 THE CHAIRPERSON: -- in the event you would  
3 want to have the playground located there. So that  
4 would most likely -- if that's what the church decides  
5 that they are going to do, then I would say for the  
6 playground, you would have to have another public  
7 meeting to locate it, because that's not even adjacent  
8 to this property. So it's not, so --

9 UNKNOWN SPEAKER: I think according to a  
10 review of the record, it has to be (unintelligible).

11 THE CHAIRPERSON: Right.

12 MR. BRADY: Right.

13 THE CHAIRPERSON: I would guess that that  
14 wouldn't work, since it was described as being a lot a  
15 way. Okay? All right. Is everyone okay now with  
16 what -- Okay. Is there a motion to close this public  
17 hearing?

18 UNKNOWN SPEAKER: Let me just -- one more  
19 question, please. I'm sorry.

20 THE CHAIRPERSON: No, go right ahead.

21 UNKNOWN SPEAKER: Ms. Ayers, as far as  
22 people dropping off and picking up children, I would  
23 imagine most people would be coming and going  
24 approximately at the same time. And my question is:



1 UNKNOWN SPEAKER: Second.

2 THE CHAIRPERSON: We have a motion and a  
3 second to close the public hearing.

4 We will now have the regular meeting. Are  
5 there any decisions or corrections to the agenda?

6 UNKNOWN SPEAKER: I'm incredibly impressed  
7 by the -- don't mind me -- minutes. Go on.

8 THE CHAIRPERSON: All right. Does anyone  
9 have any corrections?

10 UNKNOWN SPEAKER: I'm trying to move us  
11 along here.

12 THE CHAIRPERSON: If not, we will entertain  
13 a motion to approve the agenda as submitted.

14 UNKNOWN SPEAKER: So moved.

15 THE CHAIRPERSON: Is there a second?

16 UNKNOWN SPEAKER: Second.

17 THE CHAIRPERSON: Okay. All in favor?

18 UNKNOWN SPEAKER: Aye.

19 UNKNOWN SPEAKER: Aye.

20 UNKNOWN SPEAKER: Aye.

21 THE CHAIRPERSON: Okay. Okay. Next is the  
22 approval of the minutes.

23 UNKNOWN SPEAKER: I'm very impressed with  
24 the minutes. I can't believe how complete they are. I

1     didn't see any flaws, and it's very helpful to me to  
2     look back at what we did and have such an incredible  
3     record. So I approve the minutes, move that we approve  
4     the minutes and also thank everybody connected with  
5     typing them up.

6                 THE CHAIRPERSON: Okay. We have a motion to  
7     approve the minutes as submitted? Is there a second?

8                 UNKNOWN SPEAKER: I'll second.

9                 THE CHAIRPERSON: We have a motion and a  
10    second to approve the minutes as submitted. All in  
11    favor?

12                UNKNOWN SPEAKER: Aye.

13                UNKNOWN SPEAKER: Aye.

14                THE CHAIRPERSON: Opposed? Minutes are  
15    approved as submitted.

16                The first item on our agenda is the  
17    application of Sonja Ayers for the conditional use  
18    permit to operate a daycare center at 329 Mulberry  
19    Street, further identified by Sussex County Tax Map and  
20    Parcel 2-35-14.19-49.00, 61.00, and 62.00. The property  
21    is located in the R-1 Zoning District.

22                Does anyone have any comments they would  
23    like to make in reference to this application?

24                MR. BRADY: A question for Robin: Were you

1     able to confirm what I thought and that someone made by  
2     the ordinance, I think, 2007, number three, may be  
3     affected by the application in front of the Board  
4     tonight? 2007(3) was the sex offender residency  
5     ordinance. And I believe when I did a cursory check,  
6     there may be a registered sex offender who lives within  
7     the distance of the new application.

8                 THE CHAIRPERSON: And this means what?

9                 MR. BRADY: Well, an ordinance was passed  
10     prohibiting sex offenders from living within certain  
11     distances of certain types of occupations, at the last  
12     meeting. This is now an application that came in that  
13     was apparently pending at the time. But when I checked,  
14     after the app -- the ordinance was effective  
15     immediately. And therefore, if this is approved and  
16     recommended to Council, it may require somebody to move,  
17     because there was no grandfather clause put in place.

18                The concern for public safety was that the  
19     ordinance was designed to prohibit registered sex  
20     offenders from being at a distance within a certain  
21     number of feet of children and occupancies that children  
22     would be at. And this type of occupancy falls squarely  
23     within the ordinance that was approved by Town Council  
24     earlier this month. When Robin and I talked, he was

1     going to double-check, because I believe, if you look at  
2     your numbered map, I believe -- were you able to check  
3     on that? Is it number -- the occupant is in number 60?  
4     And the application that is before you is for -- the  
5     building is in plot 61.

6                 MR. DAVIS: Yes. The occupant was at parcel  
7     number 61, which is on Reed Street.

8                 MR. BRADY: And the distance, though --  
9     because of the distance from the school, it would not  
10    apply to the school. But it would apply to the daycare  
11    being on the parcel next door.

12                THE CHAIRPERSON: What is the distance?

13                MR. BRADY: The distance was 250 feet, I  
14    believe. That's why, from where the school building is  
15    located, from parcel 60, it didn't apply. But parcel 60  
16    to parcel 61 is adjacent. So I don't think of any  
17    creative math I could do where it's not within 250 feet.

18                I have to bring take to your attention.  
19    That's one of the things I look at when I review to make  
20    sure there is compliance with all the Town ordinances.  
21    I was pretty sure no one was aware of this.

22                MR. DAVIS: But John, does the ordinance say  
23    that nobody can move in or --

24                MR. BRADY: No, it doesn't prohibit you from

1     granting the application tonight. It just gives me a  
2     faster way into court, because the Applicant -- the  
3     resident of 60 can now sue the Town, saying that you  
4     have now, by your approval process, caused me to have to  
5     leave my residence and could do hardships and could go  
6     into the Court of Chancery.

7                     However, for purposes of what you do  
8     tonight, since you have to make a recommendation on this  
9     to Council, you can continue with that recommendation.  
10    Now you understand why I was so precise in the public  
11    hearing to make sure you had a defined record with all  
12    of the information that would be necessary. And I would  
13    ask, as part of your deliberations and as part of the  
14    reasons, if you do decide to vote in favor of this  
15    application, that you do -- when you have your role call  
16    vote, with specificity -- balance the reasons of public  
17    safety and neighborhood inconvenience of one person, if  
18    you are voting in favor of it, for the benefits to the  
19    community, as was stated in the public hearing, where  
20    there is a need for this type of daycare facility within  
21    the Town and the reasons why you support it so as I can  
22    have the proper record to defend the Town, if a lawsuit  
23    was filed in an appropriate court.

24                     UNKNOWN SPEAKER: Gosh.

1                   MR. BRADY:  Sorry.  Now you know, Robin,  
2   when reread everything, I figured I had to be here, even  
3   if I wasn't feeling well.

4                   UNKNOWN SPEAKER:  And does the police -- do  
5   the police monitor --

6                   MR. BRADY:  Under the --

7                   UNKNOWN SPEAKER:  -- sex offenders in any  
8   way?

9                   MR. BRADY:  There is a tier structure, and  
10  there is tier one, two, and three.  And I believe, if I  
11  am recalling correctly, when I researched it, this is a  
12  tier two offender, which means it would require  
13  door-to-door notice when the occupancy changed.  Because  
14  there is no child care facility there right now, it does  
15  not require that.  The school knows, because the school  
16  knows all the registered sex offenders in the Town.  And  
17  that's what the police chief does, to make sure they  
18  have a list of all of them.  But it does not require  
19  him -- he was not required to move because of the  
20  passing of the ordinance the first Monday.

21                   The issue now becomes if the Town Council  
22  grants the conditional use, then the issue comes:  Is he  
23  grandfathered or not?  And when the discussions were in  
24  front of the Town Council, there was no grandfathering

1       done.  Ms. Weeks --

2                   MS. WEEKS:  May I ask a question, just out  
3       of procedure?

4                   MR. BRADY:  Because you are -- have recused  
5       yourself, you can't.

6                   MS. WEEKS:  Okay.

7                   MR. BRADY:  But you can ask somebody else to  
8       ask the question.

9                   MS. WEEKS:  Okay.

10                  MR. BRADY:  But you have to do that without  
11       making a record of it.

12                  Did all -- Was there a notification in the  
13       record under 11.13 that all owners within 200 feet was  
14       notified?  Okay.

15                  THE CHAIRPERSON:  And was this application  
16       filed before the ordinance was passed?

17                  MR. BRADY:  It was filed after the second  
18       reading of the ordinance, but before the final vote on  
19       the ordinance.

20                  UNKNOWN SPEAKER:  So the --

21                  MR. DAVIS:  And actually, Ms. Ayers and  
22       Reverend -- Pastor Harmon have been in contact with me  
23       way before this issue --

24                  MR. BRADY:  Right.

1                   MR. DAVIS:  -- of what was going on here, I  
2   mean of the final vote.

3                   UNKNOWN SPEAKER:  I guess that was my  
4   question.  If the ordinance was passed on the first  
5   Monday in --

6                   MR. BRADY:  February.

7                   UNKNOWN SPEAKER:  -- February.

8                   MR. BRADY:  It was introduced in December.

9                   UNKNOWN SPEAKER:  Okay.  This was --

10                  MR. BRADY:  Filed in --

11                  UNKNOWN SPEAKER:  Filed prior to?

12                  MR. BRADY:  -- January.

13                  UNKNOWN SPEAKER:  Okay.  So it was prior --

14                  MR. BRADY:  It was after the ordinance had  
15   been introduced, been referred to committee, but before  
16   the final passage.  It was received, actually, 2/8, the  
17   application.  And the ordinance passed 2/5 --

18                  UNKNOWN SPEAKER:  So there was --

19                  MR. BRADY:  So although they talked -- they  
20   may have had earlier discussions -- the final  
21   application was not filed until on -- yeah, 2/5 was the  
22   date.  This was filed three days later, 2/8.  It was  
23   filed after the ordinance went into effect.

24                  Please don't confuse what I'm saying.  All

1 I'm saying is you can still vote up or down on this.  
2 But you need to make the reasons that you are voting up  
3 or down for this in the record, because this record will  
4 probably be reviewed as the Town Council record in  
5 March, and it could be the basis of a lawsuit. And  
6 that's why we have been so very particular tonight about  
7 why all the comment be taped so all the reasons be put  
8 on the record. I'm trying to be a little proactive.

9 UNKNOWN SPEAKER: I guess that was my --  
10 You're kind of like in a catch 22 situation, because if  
11 you vote, you are opening yourself up a lawsuit, a  
12 possibility.

13 MR. BRADY: No, not you personally.

14 UNKNOWN SPEAKER: That's the --

15 UNKNOWN SPEAKER: Well, we helped support  
16 the Town's --

17 MR. BRADY: Well, the issue becomes --

18 UNKNOWN SPEAKER: (Unintelligible).

19 MR. BRADY: The issue becomes that it's  
20 residents near a daycare center. And at the time the  
21 ordinance was passed, the resident was not in violation  
22 of the new ordinance. All of the registered sex  
23 offenders we looked at at the time, where they lived.  
24 But this application was not on my radar screen when I

1 did the first reading and the review in December. This  
2 application was officially filed after the ordinance was  
3 filed. I'm not saying you can't vote on this tonight.  
4 All I'm saying is if you decide to vote for it, please  
5 put your record -- as with any application that you do  
6 that could be the subject of review, please, please list  
7 the reasons why the benefits to the Town outweigh a  
8 hardship to a single individual.

9 UNKNOWN SPEAKER: Counselor, are you  
10 permitted to tell the committee if the person that we  
11 are concerned about, does he or she own the home?

12 MR. BRADY: My understanding is that he's  
13 the deeded owner of the home, and further, that he  
14 should have received notice of tonight's meeting.

15 UNKNOWN SPEAKER: And --

16 MR. BRADY: It is a public record, all of  
17 the information. I just don't think the specific  
18 details of the offense, the involvement, the occupation  
19 is necessary for you to make your decision. So that's  
20 why I'm not going --

21 THE CHAIRPERSON: Okay. I have a question  
22 for you. The church was there. The church holds  
23 services on Sunday. I know this church very well,  
24 because I live down the street. They have activities

1 all the time. They have choirs. They have youth  
2 groups. They have all types of things that have been  
3 going on there for years. And as far as I know, they  
4 still do. They are very active, very pro community.  
5 There are children there many days of the week. Does  
6 this mean because the church is there and --

7 MR. BRADY: The church was not in the  
8 ordinance. A daycare center was.

9 THE CHAIRPERSON: What ordinance? The  
10 Town's ordinance that they (unintelligible) --

11 MR. BRADY: The Town's ordinance that was  
12 just passed.

13 UNKNOWN SPEAKER: Because of the timing.

14 THE CHAIRPERSON: So kids can go to a Sunday  
15 school next to a sex offender, but they can't go to a  
16 daycare next to one.

17 MR. BRADY: No. Did they -- The Sunday  
18 School was not considered a part of the school. Sunday  
19 School is not considered a school or daycare under the  
20 definitions.

21 THE CHAIRPERSON: I'm asking a question, I  
22 guess, that the law says a sex offender can't be within  
23 so --

24 UNKNOWN SPEAKER: Can't reside.

1                   THE CHAIRPERSON:  -- within so many feet of  
2   a daycare or a school or whatever.

3                   MR. BRADY:  Correct, daycare, school, or  
4   library.

5                   THE CHAIRPERSON:  Or the library.

6                   MR. BRADY:  But it is not -- the problem is  
7   for the resident.  It's not the problem for the church.  
8   If you approve the application and recommend it to Town  
9   Council and it's granted by Town Council, then the  
10  notice will have to go out to the affected individual by  
11  the chief of police, under the ordinance, and then the  
12  issues will be determined whether or not it applies,  
13  because it's a new use.

14                  I just had to make you aware of any laws  
15  that could interfere with this or potential issues that  
16  could come up.  And that's what I think I've spent the  
17  last 15 minutes doing.

18                  UNKNOWN SPEAKER:  But our role is really  
19  restricted anyway.

20                  MR. BRADY:  That's correct.  You have to  
21  base it on the articulated reasons and the conditional  
22  use.  I am just trying to make a full record.

23                  UNKNOWN SPEAKER:  So there doesn't appear to  
24  me to be no reason why we shouldn't move ahead and make

1     our decision.

2                   MR. BRADY:  The issue about notice was done  
3     to ensure that notice to the adjacent property owner was  
4     given.  If there was no notice to the adjacent property  
5     owner, that would have been an issue, because it would  
6     not have met under 11.1.3(b) (1).  But because the notice  
7     went there and the adjacent property owner has a  
8     restriction on his conduct because of activity that he  
9     did, and that restriction on his conduct is now the  
10    subject of a Town ordinance, that is the issue I wanted  
11    to make sure was fully developed in the record.

12                  If the Chair -- Technically, Reverend, it's  
13    out past a public hearing.  So it's just for questions  
14    between the Commissioners and myself and the Town  
15    engineer, who may have some issues.

16                  UNKNOWN SPEAKER:  I will say, though, that  
17    during the public hearing, this was information that a  
18    lot of people didn't have.  You know, I'm sorry.  I  
19    don't know.

20                  THE CHAIRPERSON:  Well, frankly --

21                  UNKNOWN SPEAKER:  If we could make an  
22    exception.

23                  THE CHAIRPERSON:  -- the Planning & Zoning's  
24    job is to look at land use.  And we have to look at this

1 as to whether the use of a daycare at this particular  
2 location is appropriate or inappropriate and an asset or  
3 not to our Town and our community. And other Town  
4 ordinances have to be enforced by other departments  
5 within our government. So although it's unfortunate --  
6 and I feel for the daycare operator and I also feel for  
7 the man that owns the property or woman, whatever the  
8 case may be, next door -- we have to look at this  
9 particular item as the land use. And is it appropriate  
10 or not? And if we deem -- we feel it is an appropriate  
11 use for this location, what stipulations we would like  
12 to put on it for our recommendation to go to Council.

13 MR. BRADY: That is correct, and that is  
14 under 11.1.3(c).

15 THE CHAIRPERSON: So I think that although  
16 our attorney has made us aware of an ordinance that the  
17 Town has adopted in reference to a sex offender, I think  
18 our job here is to determine whether or not we should  
19 allow a daycare to operate at this location, and if we  
20 feel it should, to forward it to the counsel with  
21 whatever recommendation and conditions that we deem  
22 necessary. And they have the opportunity to approve or  
23 deny or add or delete any conditions that we put on our  
24 recommendation.

1                   So therefore, does someone want to make a  
2       recommendation one way or the other? Are there any  
3       other comments or questions you have that you would like  
4       to discuss in reference to this application?

5                   UNKNOWN SPEAKER: Linda, I understand  
6       exactly what you said in regards to what our role is  
7       here on the Committee. However, I would like to ask our  
8       Counselor a question in regards to a sex offender.

9                   Mr. Brady, if one is determined a sex  
10      offender, does that mean they have been convicted of a  
11      crime that's sexual in nature?

12                  MR. BRADY: Under Delaware law, to be a  
13      registered sex offender, one must have committed a  
14      misdemeanor or a felony, be assigned a tier level, and  
15      be a registered sex offender for a term of years between  
16      15 and life.

17                  UNKNOWN SPEAKER: No. That was my next  
18      question. Is the person in question, do you know if he  
19      is -- has been determined to be an offender for life?

20                  MR. BRADY: The answer is not relevant to  
21      your consideration tonight. It's not a factor that  
22      falls underneath your consideration.

23                  UNKNOWN SPEAKER: Well, my rule tonight is  
24      to look at the property in question, and if we deem

1     it's -- as the Planning & Zoning we vote to have the  
2     go-ahead with the daycare, what happens -- I guess I  
3     shouldn't even ask that, but I'm going to ask it  
4     anyway -- what happens to the property owner?

5                 MR. BRADY: He can continue to own the  
6     property under our current ordinance. He may not be  
7     permitted to live there.

8                 UNKNOWN SPEAKER: Okay.

9                 UNKNOWN SPEAKER: Well, who determines that?

10                UNKNOWN SPEAKER: I would like --

11                MR. BRADY: That would be -- it's not my  
12     determination. It would be up to a court. He would  
13     have -- The way the ordinance is written, a notice of  
14     violation would be sent once the daycare facility opened  
15     and then -- if he was living there. And then there is  
16     an opportunity to challenge that in the appropriate  
17     court venue. And then a person could file an action in  
18     the Court of Chancery, looking for an injunction against  
19     the application to the ordinance against him for  
20     reasons, alienation of property rights, issues like  
21     that, and it would be litigated in the appropriate  
22     court. It actually was a discussion at the council  
23     meeting. I just didn't know I was having a test case  
24     coming so fast.

1 UNKNOWN SPEAKER: Well, I think one  
2 important thing to remember when we are voting is that  
3 nobody here is approving -- say, approving the daycare  
4 so that this man will have to move. Ultimately, the  
5 responsibility seems to me was with him or her and his  
6 or her actions.

7 And I just feel strongly that we shouldn't,  
8 you know, deny something that I think is so needed in  
9 the Town. And these seem to be, you know, the right  
10 people and the right location. And ultimately, it seems  
11 that the Town would have a good case against it, because  
12 there's nothing personal in our decision.

13 THE CHAIRPERSON: Would someone like to make  
14 a motion or discuss stipulations or --

15 UNKNOWN SPEAKER: How should the motion be  
16 worded?

17 THE CHAIRPERSON: I think he's writing it  
18 right now.

19 UNKNOWN SPEAKER: Yeah.

20 UNKNOWN SPEAKER: Okay. I'll do that, if  
21 you'll write it for me.

22 THE CHAIRPERSON: Any particular  
23 stipulations that the Commission feels needs to be  
24 attached to the recommendation should it be an

1 application to recommend approval?

2 UNKNOWN SPEAKER: Just recommend approval, I  
3 would think.

4 THE CHAIRPERSON: No stipulations, other  
5 than state agency approvals?

6 UNKNOWN SPEAKER: Right.

7 UNKNOWN SPEAKER: Wouldn't we need to put a  
8 stipulation that the Council consider the sex offender  
9 question?

10 THE CHAIRPERSON: No.

11 UNKNOWN SPEAKER: We have to.

12 THE CHAIRPERSON: Because it's not a land  
13 issue.

14 UNKNOWN SPEAKER: They've already passed  
15 that, haven't they, Madam Chair?

16 THE CHAIRPERSON: It's a land use issue, not  
17 an ordinance.

18 UNKNOWN SPEAKER: That's not our role.

19 THE CHAIRPERSON: No.

20 UNKNOWN SPEAKER: Madam Chair?

21 THE CHAIRPERSON: Yes.

22 UNKNOWN SPEAKER: Do you think the pastor  
23 would might want to reconsider this since he knows this  
24 information now?

1                   THE CHAIRPERSON: The Applicant can withdraw  
2     at any time they choose to. They can withdraw after  
3     this meeting. They can do whatever they want, before it  
4     goes to Council. And they could actually, if the  
5     Council didn't make a decision that night, could  
6     withdraw at that time, should they choose to do so. So  
7     I mean they have time to think about what they want to  
8     do, and we could go ahead and move forward with whatever  
9     we feel is the best thing for the Town.

10                  MR. BRADY: Are there any conditions on the  
11     application? There were some comments about parking,  
12     about a fenced-in play area located on the property.

13                  THE CHAIRPERSON: Well, a fenced-in play  
14     area is a requirement the State, correct?

15                  MR. BRADY: It's my understanding that under  
16     the current Office of Child Care Licensing act, a  
17     fenced-in play area is required with sturdy playground  
18     equipment.

19                  THE CHAIRPERSON: Would anyone want to put a  
20     particular stipulation with reference to hours of  
21     operation?

22                  UNKNOWN SPEAKER: It's kind of odd, no  
23     earlier than --

24                  THE CHAIRPERSON: You could put six a.m. to

1       --

2                   UNKNOWN SPEAKER:  -- say, from six a.m. to  
3       six p.m.

4                   THE CHAIRPERSON:  Or you could even make it  
5       7:00 p.m., because there's some parents that work until  
6       5 or 5:30 and can't get there until six or 6:30.  And  
7       none of those hours would be invasive to any of the  
8       residents, so --

9                   UNKNOWN SPEAKER:  I would suggest from six  
10      a.m. to seven p.m. -- no, no, wait -- six a.m. to --

11                  THE CHAIRPERSON:  To seven p.m.

12                  UNKNOWN SPEAKER:  Right.

13                  UNKNOWN SPEAKER:  That's five days a week?

14                  UNKNOWN SPEAKER:  Uh-huh, yes.

15                  THE CHAIRPERSON:  Monday through Friday.  
16      Any other conditions?  No?  If not, we will entertain a  
17      motion.

18                  UNKNOWN SPEAKER:  I would like to make a  
19      motion to recommend the approval of the application for  
20      Sonja Ayers to operate a daycare center at the Bethel  
21      AME Church in Milton, Delaware, with all approvals as  
22      required by the state from six a.m. to seven p.m. from  
23      Monday to Friday -- or should that be through Friday?

24                  THE CHAIRPERSON:  Okay.  We have a motion.

1 Is there a second?

2 UNKNOWN SPEAKER: I enthusiastically second  
3 it.

4 THE CHAIRPERSON: I have a motion and a  
5 second. All in favor by a roll call vote?

6 UNKNOWN SPEAKER: Aye.

7 UNKNOWN SPEAKER: Aye.

8 UNKNOWN SPEAKER: Aye.

9 THE CHAIRPERSON: Aye.

10 UNKNOWN SPEAKER: Aye.

11 UNKNOWN SPEAKER: Aye.

12 MS. WEEKS: Abstain.

13 THE CHAIRPERSON: And with the record that  
14 Ms. Weeks abstained from the entire proceedings.

15 Okay. The next item on our agenda is the  
16 application of Mulberry Street Properties requesting  
17 final site plan approval for the construction of an  
18 exterior dining deck and covered gazebo at 122 Mulberry  
19 Street, further identified by Sussex County Tax Map and  
20 Parcel Number 2-35-14.19-106.00. This property is  
21 located within the Town Center Zoning District.

22 Is the Applicant present on behalf of this  
23 application?

24 UNKNOWN SPEAKER: Yes.

1                   THE CHAIRPERSON:   Okay.   You got a copy of  
2   Mr. Kerr's comments?

3                   UNKNOWN SPEAKER:   Yes.   (Unintelligible)  
4   this afternoon.

5                   THE CHAIRPERSON:   Okay.   Does anyone have  
6   any other questions, other than Mr. Kerr's?   Do you want  
7   to review Mr. Kerr's list?   We have received a copy --  
8   or we do know that there is a copy of the lease so that  
9   the two parcels will go together, which one area is the  
10   parking area and the other area is the restaurant area  
11   itself.

12                  UNKNOWN SPEAKER:   Yes.   (Unintelligible).

13                  THE CHAIRPERSON:   If a what?

14                  UNKNOWN SPEAKER:   (Unintelligible) first  
15   page (unintelligible).

16                  THE CHAIRPERSON:   It probably --

17                  UNKNOWN SPEAKER:   Signatures.

18                  THE CHAIRPERSON:   It probably wouldn't be  
19   bad to have one submitted to go with the record of  
20   application.   But I don't think we necessarily need it  
21   here.   But it wouldn't be bad to have it with the  
22   application to be filed at Town.

23                  UNKNOWN SPEAKER:   Can we have a little  
24   quiet, attention to the matter?

1                   THE CHAIRPERSON: Does anyone else have any  
2     comments, or shall we just let Mr. Kerr review his with  
3     the Applicant?

4                   UNKNOWN SPEAKER: Madam Chairman? Mr. Kerr,  
5     I would like to say thank you for your report. I don't  
6     know if everybody got it off their Internet. And I  
7     would like to know if we could go through Mr. Kerr's  
8     comments one by one, if that would be appropriate?

9                   THE CHAIRPERSON: Sure.

10                  UNKNOWN SPEAKER: Would -- were there  
11     particular ones that you wanted to look at?

12                  UNKNOWN SPEAKER: Well, first of all, I  
13     wanted to say that I was noticing on the drawings that  
14     were submitted, if you notice on the side here, where  
15     the parking spaces are delineated on the side here, the  
16     scale is one-sixteenth of an inch equals one foot, which  
17     would mean that each of the parking spaces delineated is  
18     approximately four feet by nine feet.

19                  MR. KERR: What has happened is that what I  
20     think was a full size drawing has been reduced. So it  
21     was originally drawn at one-sixteenth of an inch.

22                  UNKNOWN SPEAKER: Okay.

23                  MR. KERR: It has been reduced down, so it  
24     essentially is not out of scale.

1 UNKNOWN SPEAKER: Okay.

2 MR. KERR: Because when you try to check a  
3 dimension that is dimensioned, it just --

4 UNKNOWN SPEAKER: It doesn't work.

5 MR. KERR: -- doesn't check back.

6 UNKNOWN SPEAKER: Right. And this is a very  
7 reputable company, so I couldn't figure out what went  
8 wrong there. But that aside, I don't see how there are  
9 that many parking spots in that lot.

10 UNKNOWN SPEAKER: They are actually -- there  
11 actually won't be any parking spots left, because some  
12 of those parking spots you are looking at, I assume to  
13 the right of the easement line; is that correct --

14 UNKNOWN SPEAKER: Yes.

15 UNKNOWN SPEAKER: Yes. Those will not be  
16 there, which will, in essence, probably give us  
17 somewhere around 25 spots, I would assume. Obviously,  
18 we are required for more, as far as square footage is  
19 concerned. But it would be up to the Board.

20 There's been times where, where by it being  
21 in Town Center, that you could waive that requirement to  
22 have, say, 40 spots with who you would be required to  
23 have. I know there are other restaurants in town that  
24 don't have any parking. So I would assume that if we

1     have 25, say, that would fit within that zone, the  
2     additional 15 could come from public parking.

3                   UNKNOWN SPEAKER:   Just meaning to be  
4     persnickety, I have no trouble with giving some parking.  
5     I just think that when plans are given to us, they  
6     should reflect what's really going to be there and  
7     what's really going to happen so that we can judge it  
8     properly. Here we have a plan that shows 10, 20, 31,  
9     35, 37 parking spots. And there's no way 37 parking  
10    spots fits there that I can see. I drove over there  
11    today. I mean I don't know how they got 37 parking  
12    spots.

13                  UNKNOWN SPEAKER:   Unfortunately, there was  
14    an oversight on our architect's part (unintelligible)  
15    the parking spaces for us that I'm not sure if he  
16    realized about the easement or not. But there was an  
17    oversight there.

18                  UNKNOWN SPEAKER:   Right. I have no trouble  
19    with the parking. I just want the right things to come  
20    to the Board; that's all. Now, does anybody -- Would it  
21    be all right, Madam Chairman, if we went from Mr. Kerr's  
22    report?

23                  THE CHAIRPERSON:    Sure.

24                  UNKNOWN SPEAKER:    Do you want to do that?

1                   MR. KERR:   SPEAKER:   Absolutely.

2                   THE CHAIRPERSON:   You can start it, Bob,  
3   Item Number one.

4                   MR. KERR:   Item Number one just repeats that  
5   the property is within the Town Center District, that a  
6   special use permit was requested and granted at the last  
7   meeting, and now this is back for the preliminary site  
8   plan approval -- or I'm sorry, for the final site plan  
9   approval.   Preliminary was given at the last meeting.

10                  Item number two was a discussion of the  
11   100-year floodplain.   It still hasn't been shown on the  
12   drawings.   A portion, if not all, of the property is  
13   within it.   But I'm not sure exactly how much of it is  
14   within the floodplain.   There's a letter submitted that  
15   basically they are going to take care of the floodplain  
16   requirements, and it really is more of a concern when  
17   requesting the building permit.   The code enforcement  
18   officer or whoever does the building permit review is  
19   the one who is charged with making sure that the  
20   drawings are submitted and approved -- or I'm sorry, are  
21   submitted and prepared in accordance with the ordinance.  
22   I bring it up to the Planning & Zoning, because the  
23   floodplain is something you are supposed to look at and  
24   its affect in filling or changing the flood

1 characteristics and also to make sure that the Applicant  
2 is aware of the condition, that it is within the  
3 floodplain.

4 The next item is the preliminary site plan  
5 requirements that are in Section 6.1.5 of the zoning  
6 ordinance, and that was attached to the handout.

7 And I'm sorry. Does anyone on the  
8 Commission need a copy of the handout or --

9 UNKNOWN SPEAKER: I think so.

10 UNKNOWN SPEAKER: I need one.

11 MR. KERR: I'm sorry.

12 UNKNOWN SPEAKER: Sorry, Bob.

13 MR. KERR: Here are a bunch of them. Thank  
14 you, sir.

15 UNKNOWN SPEAKER: On that -- on that, note,  
16 can I -- no, this action letter was submitted to  
17 everyone on there (unintelligible), which I turned in on  
18 to the Town on February 8th?

19 UNKNOWN SPEAKER: Yes.

20 UNKNOWN SPEAKER: In fact, (unintelligible).

21 MR. DAVIS: Yes, yes.

22 MR. KERR: Okay. I don't believe I have  
23 seen it, but --

24 UNKNOWN SPEAKER: We did do a ground floor

1 elevation (unintelligible).

2 MR. KERR: At the back of the attachment is  
3 the excerpt from the zoning ordinance, the preliminary  
4 site plan requirements. And do you want me to go  
5 through each item? Okay.

6 UNKNOWN SPEAKER: The ones that concern you.

7 MR. KERR: Sure. The one with the fact that  
8 the drawings were not created to scale makes it very  
9 difficult to check things, such as parking or setbacks  
10 or anything. It's -- there's some scale there. It's  
11 drawn to a scale, but it's not something that you can  
12 lay a scale on and check a dimension. If the contours  
13 that were shown would help with the floodplain, this is  
14 an existing structure that is being added to, so it's  
15 not quite as critical, but it is something that gives  
16 you more information on how much of the property would  
17 have been within the floodplain and what impact the  
18 addition would have to within the floodplain.

19 Item F would be the location of the land  
20 uses. There is nothing -- on the parking lot area,  
21 looking at an aerial photo, there's quite a bit of grass  
22 if that area, and there's also a storage shed or a  
23 garage or something that's not shown on this, on the  
24 plans submitted. And there is no information saying how

1 much -- what percentage of the site is paved or what  
2 percentage is pervious for storm water management.  
3 There is some landscaping shown along the north border  
4 and a privacy fence shown along the east property line  
5 of the restaurant, but there's no details as to whether  
6 it's going to be a six-inch tree or a six-foot tree,  
7 what type of -- whether it's an evergreen or a deciduous  
8 tree or -- there's just no details.

9               We've touched on the parking. The parking,  
10 there are 37 spots shown. I think it's unlikely that  
11 more than maybe 20 spaces could actually be provided  
12 without tearing up the existing grass, moving the  
13 existing structure, and not imposing on the Town's  
14 right-of-way, which along the Broadkill river, the Town  
15 has an easement which is where the Governor's Walk is  
16 located.

17               There's some minor details on signage, but  
18 there is no actual -- what the size of the sign is. Is  
19 it a two-foot square sign or a 10-by 20-foot sign?  
20 There's no details on where it's going to be. I'm  
21 sorry. There are details on where it's going to be, but  
22 it's the details of what it will look like.

23               I believe there is some existing propane  
24 storage tanks that are behind the building that haven't

1     been shown. There is no information -- there isn't a  
2     specific data column that has the information that we  
3     typically look for, the size of the property -- well,  
4     just everything that's listed there. A lot of it is not  
5     applicable for this. But the data column that provides  
6     that information just makes it easy to do a quick review  
7     that certain things are there.

8                     And then the setback lines aren't shown,  
9     which in the Town Center, there's only a rear setback, I  
10    believe, is the only one. But that isn't shown to make  
11    sure they aren't building within that area. And then  
12    there's another one on signs. So I guess signs are  
13    covered twice.

14                    And then there's two certifications that  
15    should be placed on the site plan and signed by -- one,  
16    by the owner of the property and, two, by the engineer  
17    or surveyor or architect that prepared the drawings that  
18    they have been prepared properly and to its standards of  
19    the Town.

20                    I think we've talked about parking back on  
21    the memorandum, item four.

22                    Item five, parking places are to be paved,  
23    which it doesn't actually say on the drawing anyplace  
24    whether it's paved or not. The majority of the parking

1 lot is, but there is grass around the edge that hasn't,  
2 that the entire lot isn't paved. And then there's  
3 supposed to be something -- either a bumper block or a  
4 curb -- to keep cars from going outside where they're  
5 supposed to be and end up parking on grass or other  
6 areas.

7 One of the comments at the preliminary was a  
8 loading area. It has been added. The existing and  
9 proposed elevations have not been provided, meaning the  
10 deck elevation, what the existing ground is there and  
11 what the deck elevation would be.

12 Again, the landscaping, there's no details.  
13 A trash area has been identified, but I believe at your  
14 last meeting you had discussion on whether you wanted to  
15 see it fenced as a separate -- there was a discussion  
16 over dumpsters versus small, individual receptacles.

17 Lighting is shown on the deck, but there's  
18 no details as to what size lights or the details on the  
19 lighting. At the last meeting we discussed EDUs and  
20 whether Mayor and Council have additional EDUs that they  
21 wish to use. They submitted a portion of the lease, and  
22 that -- I would ask Mr. Brady if that is sufficient, to  
23 make sure it would remain as one site. And then there's  
24 really nothing, without the owner's certification on the

1 drawing, that indicates that the drawing -- I'm sorry --  
2 that the owner is in agreement with what is being  
3 proposed here. The lease says they have leased the  
4 building but not necessarily that the owner is in  
5 agreement with the deck being constructed.

6 Now, I know from previous meetings that the  
7 owner previously came before the Commission planning to  
8 build a deck. But that's not the same as the owner  
9 acknowledging that they want this done. As a property  
10 owner, you would be kind of upset if somebody just kind  
11 of came along and got a site plan to do something to  
12 your property without your knowledge.

13 UNKNOWN SPEAKER: Thank you.

14 THE CHAIRPERSON: Okay. Does anyone else  
15 have any questions of Mr. Kerr about this site plan?

16 MR. BRADY: You said you had the lease?

17 UNKNOWN SPEAKER: I think you have a copy, a  
18 full copy of the lease.

19 MR. BRADY: Could I see it?

20 MR. KERR: Sure. Actually, it is a -- I  
21 have access to the original.

22 UNKNOWN SPEAKER: I could attach it.

23 MR. BRADY: I don't bite.

24 UNKNOWN SPEAKER: Madam Chairman.

1 THE CHAIRPERSON: Uh-huh.

2 UNKNOWN SPEAKER: May we ask where the  
3 handicapped parking is going to be located?

4 UNKNOWN SPEAKER: Yes. I believe --

5 UNKNOWN SPEAKER: I think that's in the  
6 front.

7 THE CHAIRPERSON: Right here in the front.

8 UNKNOWN SPEAKER: That's right there on  
9 (unintelligible).

10 UNKNOWN SPEAKER: So you've changed it?  
11 You've added it?

12 UNKNOWN SPEAKER: Yes, yes. It's located  
13 right there.

14 UNKNOWN SPEAKER: Yes, yes. It's located  
15 right here on the base of the deck, is where it will be  
16 going.

17 MR. KERR: The two handicapped spots shown.

18 UNKNOWN SPEAKER: Right. No, I remember  
19 last time you had not planned for that, and you had  
20 asked that the handicapped be in the street.

21 UNKNOWN SPEAKER: We had hoped to have it  
22 closer to the front door. But obviously, that's not --

23 UNKNOWN SPEAKER: Yes.

24 UNKNOWN SPEAKER: -- acceptable, so we need

1 to make this a little (unintelligible).

2 UNKNOWN SPEAKER: Thank you.

3 THE CHAIRPERSON: Okay. Does anyone have  
4 anything else?

5 UNKNOWN SPEAKER: One quick mention, I had --  
6 and I say this in the context of really looking forward  
7 to eating there. But I was just a little disappointed  
8 with the materials, because I thought we had, a month  
9 ago or at the other meeting, a lot of concerns about  
10 things not being laid out enough so that we could make  
11 an informed decision. And I'm just a little  
12 disappointed with what we have, because it does seem  
13 like we -- it would still help us to have more  
14 information and --

15 UNKNOWN SPEAKER: Let me address some of  
16 your concerns.

17 UNKNOWN SPEAKER: I just thought that that  
18 was what our arrangement was a month ago. And maybe --

19 THE CHAIRPERSON: Why don't you address some  
20 of the concerns that you feel they have?

21 UNKNOWN SPEAKER: I believe the arrangement  
22 was that we would have it all a week before this  
23 meeting.

24 UNKNOWN SPEAKER: Two weeks, actually. We

1     were given two weeks -- we had to have it in two weeks  
2     prior to --

3                 UNKNOWN SPEAKER:   Right.   But we didn't get  
4     any of it.

5                 UNKNOWN SPEAKER:   And it was turned in  
6     prior to that time.   They gave us one week to get all of  
7     this --

8                 UNKNOWN SPEAKER:   That you gave in things  
9     about the lighting and the signage and --

10                UNKNOWN SPEAKER:   We received a list.

11                MR. BRADY:   Lighting and signage is not part  
12     of the application in front of you tonight.   The only  
13     thing in front of you tonight is the deck and the  
14     gazebo.

15                UNKNOWN SPEAKER:   It was part of the  
16     engineer's report.

17                MR. BRADY:   I understand.

18                UNKNOWN SPEAKER:   Right.

19                MR. BRADY:   But what is before you tonight  
20     is the final site plan -- he's waving (unintelligible).  
21     What is before you tonight is the final site plan for  
22     the gazebo and the deck.   The lighting and the signage,  
23     unless they are related to the gazebo and the deck, are  
24     not part of what is before you tonight.

1 UNKNOWN SPEAKER: Where is the gazebo?  
2 UNKNOWN SPEAKER: Right there.  
3 UNKNOWN SPEAKER: (Unintelligible).  
4 UNKNOWN SPEAKER: Look, look, right --  
5 UNKNOWN SPEAKER: On A3.  
6 UNKNOWN SPEAKER: A 12-by-12 square  
7 (unintelligible).  
8 UNKNOWN SPEAKER: See the deck right below  
9 that? And there's the gazebo right here.  
10 UNKNOWN SPEAKER: Is that a gazebo or a bar?  
11 UNKNOWN SPEAKER: That is a gazebo. There  
12 is no bar.  
13 UNKNOWN SPEAKER: Okay. Thank you.  
14 UNKNOWN SPEAKER: The deck (unintelligible).  
15 UNKNOWN SPEAKER: Thank you.  
16 UNKNOWN SPEAKER: So what you are saying,  
17 there won't be one on the deck? Not even a service bar?  
18 UNKNOWN SPEAKER: As of this time, right  
19 now, what we are applying for, there will be no bar on  
20 it.  
21 UNKNOWN SPEAKER: What will the gazebo be  
22 used for?  
23 UNKNOWN SPEAKER: It's shaded dining.  
24 UNKNOWN SPEAKER: More --

1 UNKNOWN SPEAKER: Extra shaded dining, extra  
2 shaded dining; like outside, it gets too hot out there.

3 UNKNOWN SPEAKER: Okay. Will there be  
4 electricity in the gazebo?

5 UNKNOWN SPEAKER: There will be electricity  
6 to the deck, not necessarily to the gazebo itself. I  
7 mean there will be lighting outside.

8 UNKNOWN SPEAKER: Yeah, because the gazebo  
9 is not going to become a band area or anything?

10 UNKNOWN SPEAKER: No, absolutely not.

11 UNKNOWN SPEAKER: Are you going to have  
12 music on the deck?

13 UNKNOWN SPEAKER: I would say sometimes yes.

14 UNKNOWN SPEAKER: Would you describe what  
15 kind of music, please?

16 UNKNOWN SPEAKER: It wouldn't be probably  
17 more than, you know -- what we do over in Rehoboth is  
18 usually a two- or three-man acoustic.

19 UNKNOWN SPEAKER: How many speakers?

20 UNKNOWN SPEAKER: Usually, they bring one or  
21 two speakers, I would say.

22 UNKNOWN SPEAKER: Thank you.

23 UNKNOWN SPEAKER: But I mean -- yeah, I mean  
24 live entertainment wouldn't go past -- wouldn't go into

1 the night.

2 UNKNOWN SPEAKER: Would you give me an hour,  
3 please?

4 UNKNOWN SPEAKER: Live entertainment would  
5 end at 7:00 --

6 UNKNOWN SPEAKER: Thank you.

7 UNKNOWN SPEAKER: -- outside.

8 UNKNOWN SPEAKER: Would you consider maybe  
9 earlier, stopping the loud music on the deck?

10 THE CHAIRPERSON: Earlier than seven p.m.?

11 UNKNOWN SPEAKER: Yeah, you know. I would  
12 think 9:00 would be good. But you know --

13 UNKNOWN SPEAKER: (Unintelligible).

14 UNKNOWN SPEAKER: Because it would get dark  
15 early.

16 UNKNOWN SPEAKER: We really don't have  
17 entertainment a lot. And it would probably be a special  
18 occasion, maybe an extension of the Jazz Fest, where  
19 like what Rehoboth has, or a holiday or something along  
20 those days, the following. We usually don't do a lot of  
21 entertainment. But to me, this is just -- I think 7:00  
22 is very reasonable. I don't know if people will agree  
23 with that or not.

24 UNKNOWN SPEAKER: (Unintelligible).

1 UNKNOWN SPEAKER: I think I just wanted to  
2 kind of put in the record that the Commissioners  
3 received a very well articulated letter from residents  
4 of Lake Street and surrounding areas with concerns about  
5 safety, about parking on Lake Drive and other areas, and  
6 noise associated with those. And it certainly seems to  
7 me that they have a real argument and a real concern. I  
8 think the -- Well, there was a statement -- and I hadn't  
9 realized this -- that Lewes has now banned all outside  
10 music. The thing is that the Iguana Grill in Rehoboth  
11 is ideally located where it's not -- you know, the  
12 building you're going to be leasing is in such a strange  
13 area, where it's right surrounded, in a lot of ways, by  
14 residential, where your place in Rehoboth isn't.

15 UNKNOWN SPEAKER: Actually, there are many  
16 apartments that are in proximity of the Rehoboth grille  
17 that we do get -- there's places on Baltimore Avenue  
18 that get calls, many times where I see police officers;  
19 not at our establishment --

20 THE CHAIRPERSON: Well, first of all, I mean  
21 I don't think that Milton can be compared with Rehoboth.

22 UNKNOWN SPEAKER: Or Lewes, either.

23 THE CHAIRPERSON: -- at all. And secondly,  
24 by any live entertainment that may be happening, if they

1 say they are going to stop at seven, frankly, most of  
2 your working people are barely getting home and in their  
3 homes by seven -- and myself, I don't ever get to a  
4 restaurant before seven at night -- for the  
5 entertainment to be closed. And I also feel that, you  
6 know, that's not going to interfere with most people at  
7 all.

8 UNKNOWN SPEAKER: What about the week --

9 THE CHAIRPERSON: That's a dinner hour, to  
10 start with.

11 UNKNOWN SPEAKER: What about the weekends,  
12 when they are at home and it's playing all day?

13 THE CHAIRPERSON: I don't think they've  
14 indicated they are going to have live entertainment all  
15 day.

16 UNKNOWN SPEAKER: We are rarely going to  
17 have outside live entertainment. It's only for special  
18 occasions. It would be like for the anniversary that's  
19 coming up this summer or maybe at a holiday parade or,  
20 you know, something along those lines. But we are not  
21 putting live entertainment outside every weekend.  
22 That's -- We don't do that now. We don't perceive to do  
23 that in the future, as well.

24 UNKNOWN SPEAKER: To be honest with you, I

1 would have no problem with live music outside if it  
2 wasn't acoustical and if there were no speakers. If  
3 somebody's sitting there quietly playing a guitar or a  
4 keyboard, that's terrific. But if it's going to have  
5 speakers, it does carry over the water. And that's a  
6 concern, especially on the weekends.

7 UNKNOWN SPEAKER: Well, to kind of dispel  
8 that, too, I mean you are looking at outside in a  
9 Mid-Atlantic state where you have probably half a year  
10 to access the deck. So think about six months of  
11 probably no one even being on the deck, as far as  
12 entertainment, right off the bat. So the other six  
13 months, you know, I would say it would be a lot if we  
14 had live entertainment there more than once a week. I  
15 would say that would be a lot.

16 UNKNOWN SPEAKER: Yeah. But the other six  
17 months the residents aren't outside enjoying their  
18 property either. Everybody is in the house. It's  
19 winter.

20 UNKNOWN SPEAKER: But you know, I will say  
21 your consideration of not putting the bar out would have  
22 been like -- but you thought, you know, some people were  
23 thinking that with the bar outside, it would have  
24 created more noise. You did decide not to do that. And

1     you know --

2                   UNKNOWN SPEAKER:   And we would like to face,  
3     you know --

4                   UNKNOWN SPEAKER:   -- and I'm glad you took  
5     that into consideration.

6                   UNKNOWN SPEAKER:   Yes.   We would like to  
7     face the speakers -- the small speakers we put outside,  
8     we would like to face them towards, you know, the  
9     parking lot.   They are not going to face out towards  
10    Lake Street.   So you know, I know a lot of people that  
11    like it -- I'll be honest -- when they are eating, you  
12    know.   I think we discussed that kind of --

13                  UNKNOWN SPEAKER:   Will they be kept to like  
14    50 decibels or something?

15                  UNKNOWN SPEAKER:   I don't -- I can't tell  
16    you.   Is there a noise ordinance that we have to go by?  
17    I mean I don't --

18                  UNKNOWN SPEAKER:   No.

19                  UNKNOWN SPEAKER:   There is.

20                  UNKNOWN SPEAKER:   Yes, there is.

21                  MR. BRADY:   There is a noise ordinance  
22    that's not a decibel --

23                  UNKNOWN SPEAKER:   And one other thing is --

24                  MR. DAVIS:   (Unintelligible).

1                   MR. BRADY: There is no decibel meter  
2                   currently owned by the Town, is the problem.

3                   UNKNOWN SPEAKER: And just for information,  
4                   because we are talking about live music -- which I don't  
5                   have any problem with, and it certainly would be  
6                   occasional -- but what about piped-in music on the deck?  
7                   Is that going to pretty much go all hours or --

8                   UNKNOWN SPEAKER: No. We would certainly --  
9                   the speakers outside, the small speakers, they would --  
10                  we would turn them down at 9:00, kind of just like Irish  
11                  Eyes does in Town. But they turn their music down at  
12                  nine, and so basically only the people that are outside  
13                  on the deck really can hear that.

14                  UNKNOWN SPEAKER: Yes. But what's the  
15                  difference whether it's canned or it's live, if it's  
16                  going until 9:00 at night?

17                  UNKNOWN SPEAKER: That's not --

18                  UNKNOWN SPEAKER: You said seven before.

19                  UNKNOWN SPEAKER: That was the live.

20                  UNKNOWN SPEAKER: That was live.

21                  UNKNOWN SPEAKER: That was for live.

22                  UNKNOWN SPEAKER: That was live.

23                  UNKNOWN SPEAKER: But it's no difference.

24                  It's the noise. It's not how the noise is created.

1 UNKNOWN SPEAKER: Okay. Everyone's  
2 different. I can't say that, you know, some people --

3 UNKNOWN SPEAKER: We're trying to reach a  
4 happy agreement here between you and a resident -- a  
5 heavily residential neighborhood. This is the Town  
6 Center, but it's at the very edge of the Town Center.  
7 And it faces a lot of water. And believe, that's going  
8 to carry across, and you are going to here from the  
9 people in Wagamon's West.

10 UNKNOWN SPEAKER: That's why -- I mean last  
11 time we -- I mean I encouraged people to tell us, you  
12 know, if something is at an offensive level, then we  
13 work together. I mean that's what I want to do in Town.  
14 I don't know if it's offensive until someone tells me  
15 it's offensive. But I mean to tell -- I don't want to  
16 set a bar for myself this high and say I'm not going to  
17 have any music. There may not -- there won't be there a  
18 restaurant there in a year. I can pretty much tell you.  
19 I mean I don't know how many other people are going to  
20 come in and say, you know, to people: It's not a fun  
21 atmosphere to have. I mean sometimes they go hand in  
22 hand together. I'm not saying something crazy. But I'm  
23 saying it's a social environment.

24 UNKNOWN SPEAKER: Question for the attorney,

1     please? Attorney Brady, if we grant this with allowing  
2     them to have some acoustical music, et cetera, and  
3     speakers until 7:00 at night and it is a problem for the  
4     neighbors, it's a conditional use, and it has to come  
5     back to us in a year. Right?

6                 MR. BRADY: If you grant it as a conditional  
7     use, you can put conditions on. In the past, you have  
8     put conditions on a review in one year. You can put  
9     conditions on that you should that are -- that you  
10    should -- that you desire. You can.

11                UNKNOWN SPEAKER: Because --

12                MR. BRADY: If there is a noise complaint.

13                UNKNOWN SPEAKER: -- it may not be a  
14    problem.

15                MR. BRADY: You are right. It's hard to  
16    project when you are talking theoretics tonight and you  
17    don't know the practicalities. All residents have a  
18    right to contact the police if they believe a violation  
19    of the Town ordinance is occurring. The police will  
20    investigate and do what they need to do to abate the  
21    violation. You asked a technical question earlier about  
22    the decibel and the enforceability of the decibels. It  
23    may be in the ordinance -- and I seem to recall there is  
24    an ordinance that has a certain decibel level. The

1     problem is the Town doesn't currently own a working  
2     decibel meter. So that's when I say it may become an  
3     issue of unenforceability. That does not prevent the  
4     Town from buying a decibel meter.

5                     UNKNOWN SPEAKER: Yes.

6                     MR. BRADY: But that is one of the issues,  
7     if there is a problem, then there are other ways that it  
8     can be resolved on the Town. The Town Council can  
9     direct the police department to appropriate money to buy  
10    a decibel meter. If you put a conditional use on there  
11    stating that the conditions are that there shall be no  
12    live music after seven p.m., there shall be no recorded  
13    music on the deck after nine p.m. -- and I'm just saying  
14    these conditions, based on discussions tonight -- and  
15    that this is reviewable in one year, there are  
16    conditions that can be put on a conditional use.

17                    UNKNOWN SPEAKER: Okay. I just wanted to  
18    know if it is a consistent problem with the neighbors,  
19    other than calling the police, what recourse would they  
20    have? They would have to wait the year out?

21                    MR. BRADY: Well, if there is a conditional  
22    use and there is an issue with the conditional use, the  
23    code enforcement officer could ask that the conditional  
24    use be revisited due to a recurring series of problems.

1 UNKNOWN SPEAKER: Okay. So they have a  
2 great --

3 MR. BRADY: The recurring series of problems  
4 would not be just one or two rare occasions, but more of  
5 something of four, five, six, seven, eight times where  
6 there has been no remediation by the property owner, the  
7 holder of the conditional use, at which point the  
8 Commission believes that public notice needs to be given  
9 and a hearing be held to see if the Applicant is in  
10 violation of their conditional use. They would have the  
11 opportunity to respond. And after a public hearing --  
12 due process, per se, is what that is -- the Commission  
13 would vote and could move to make changes or find that  
14 there is no violation. But that is the process that  
15 comes into play after you act tonight.

16 UNKNOWN SPEAKER: Okay. I just wanted to  
17 have something open for --

18 MR. BRADY: Sure.

19 UNKNOWN SPEAKER: -- the neighbors to come  
20 back if it is, indeed, a problem.

21 MR. BRADY: The neighbors have every  
22 opportunity, both under law and in equity. If they do  
23 believe that the Commission did something proper, they  
24 could go to the Court of Chancery and file something

1     saying that they violated -- the Commission violated its  
2     own rules. That's why I'm asking you to state  
3     everything with specificity for the record with regard  
4     to how you wish to handle the motion when a motion is  
5     appropriately made.

6                   UNKNOWN SPEAKER: Thank you.

7                   THE CHAIRPERSON: Okay. Does anyone else  
8     have any questions or responses about the site plan?

9                   UNKNOWN SPEAKER: Let's see, Linda. Let me  
10    try to gather my thoughts here. Gentlemen, we really  
11    would like to see, of course, a nice establishment come  
12    into town. And that certainly appears to be what you  
13    are trying to do. And I know the committee and most of  
14    the town's people are looking forward to that. The, I  
15    guess, concern -- well, I don't guess. The concern is  
16    the people who reside on Lake Drive do not want to hear  
17    music of any type. So what I was wondering -- and I  
18    don't know if this can be done. I'm just thinking to  
19    myself. Is there any kind of a scientific type of study  
20    that can be done as far as the placement of the speakers  
21    so they will not -- so the music will not be projected  
22    into the residential area?

23                   UNKNOWN SPEAKER: Well, that's what I had  
24    said before. We plan on facing -- you can put them on

1 swivels so they face a certain direction. We are going  
2 to face them specifically away from Lake Street,  
3 because -- I mean for the 200 feet requirements that we  
4 have, obviously, there's a conglomerate of homes that  
5 sit in one area. So I mean we are going to face them up  
6 the hill towards -- I would say towards the church, you  
7 know, in that area with our parking lot so it's not a  
8 problem.

9 But I just want to make everyone understand,  
10 these speakers aren't going to be -- it's not going to  
11 be like in a Bon Jovi concert or something out there.

12 UNKNOWN SPEAKER: Right, 12-by-12 speakers.

13 UNKNOWN SPEAKER: Everyone has different  
14 views of what loud speakers --

15 UNKNOWN SPEAKER: How many are there?

16 UNKNOWN SPEAKER: Well, at this time we have  
17 four. But that's open for -- we have four at this time,  
18 right now. And that's what we were planning on  
19 (unintelligible).

20 UNKNOWN SPEAKER: And I just want to say, if  
21 you are planning on doing them up the hill, you are  
22 going to go up the hill to all the houses on Federal  
23 Street. You have to do it into town, would be the way  
24 to do it.

1 UNKNOWN SPEAKER: The location of the  
2 facility doesn't permit that. If you're in the front of  
3 the building, it would go -- you would hit the blue  
4 siding, is what you would do, if you were facing -- just  
5 the --

6 UNKNOWN SPEAKER: The plan was to have one  
7 or two along the front. The way the building is  
8 constructed, there's a couple of alcoves that jut out.  
9 And the plan was to put the speakers with the alcove  
10 behind them so that there is actually -- the sound is  
11 going directly away from Lake Drive. And there would be  
12 one -- there would be two speakers along the front like  
13 that, facing up Mulberry Street, away from Lake Drive  
14 and then two on the side that face the parking lot,  
15 facing directly down on the deck towards town, that  
16 direction.

17 What I would like to do is, you know, put  
18 the music out there at a certain level, talk to the  
19 residents, can you hear -- is that offensive? If you're  
20 raking your leaves, or whatever the case may be,  
21 watering your lawn, can you hear that? Is that  
22 offensive? Obviously then, we don't want complaints, so  
23 we would turn it down at that point.

24 That's our only scientific research we can

1     really assure them. And we encourage that. I mean I  
2     don't know if something's too loud unless you are near  
3     water, far away, at a resident's house until somebody  
4     tells me that.

5                   UNKNOWN SPEAKER: And we don't want to be --

6                   UNKNOWN SPEAKER: Thank you.

7                   UNKNOWN SPEAKER: -- a nuisance and then  
8     have to come become before the City again and then have  
9     them yank all music away from us, which we don't want to  
10    see happen.

11                  UNKNOWN SPEAKER: And I understand that.

12                  UNKNOWN SPEAKER: And you know, that's  
13    all -- you try to work with the Town, work with us and  
14    the residents. You know what? We can't really ask  
15    (unintelligible).

16                  UNKNOWN SPEAKER: I mean everyone's idea of  
17    what too late and what too loud is is different. I mean  
18    Ms. Rogers said, you know, 7:00 is early for her to hear  
19    stuff. So I mean it's kind of -- it's a little  
20    different on -- somebody may not want to hear music  
21    after 3:00 p.m. I don't know. I mean I'm just -- we  
22    are trying to put it out there and kind of figure out  
23    what's offensive and what's not and then make those  
24    changes. So that's really all I can say about that.

1                   THE CHAIRPERSON: Well, you don't have  
2 people talking in voices --

3                   UNKNOWN SPEAKER: Well, that's what  
4 (unintelligible).

5                   THE CHAIRPERSON: -- and you don't want to  
6 have your music loud enough that someone has to holler  
7 over the music.

8                   UNKNOWN SPEAKER: Exactly. That's not  
9 comfortable for anybody.

10                  THE CHAIRPERSON: So I mean it's obviously  
11 going to be low-toned for a dinner type atmosphere.

12                  UNKNOWN SPEAKER: And my point on that, too,  
13 is the nice thing about Delaware is, you know, it's been  
14 smoke-free for so long. People are going to go outside  
15 on deck just because they aren't allowed to smoke  
16 inside. That creates, you know, a certain decibel  
17 level, just people talking. So yeah, it's not -- we're  
18 not going to try battle the people's voices by raising  
19 the music and then there's this constant --

20                  UNKNOWN SPEAKER: I am a enthusiastic  
21 supporter of the deck. I think that anything you can do  
22 out of doors in the summer is good for the town. But  
23 that's fine.

24                  THE CHAIRPERSON: Does anyone else have

1 anything?

2 UNKNOWN SPEAKER: Linda, I would like to, if  
3 I may, read the noise ordinance from the Town of Lewes,  
4 if that's okay.

5 THE CHAIRPERSON: From the Town of Lewes?

6 UNKNOWN SPEAKER: Yes.

7 THE CHAIRPERSON: Sure.

8 UNKNOWN SPEAKER: Okay. Prohibited noises,  
9 the operation of any radio or phonograph or the use of  
10 any musical instrument in such a manner or with such  
11 volume as to annoy or disturb the quiet, comfort, or  
12 repose of any persons in any dwelling, hotel, motel, or  
13 other type of residence.

14 So Mr. Brady, are you laughing at me?

15 MR. BRADY: No. I'm writing  
16 (unintelligible). I'm writing little memos to the Town  
17 Engineer, just seeing if there is a meeting now that  
18 looks like I may need him to fly down and get them.

19 UNKNOWN SPEAKER: All right.

20 MR. BRADY: I'm looking at my notes. No,  
21 I'm sorry. When he said Lewes, that's not a Town I  
22 represent. So I was (unintelligible).

23 UNKNOWN SPEAKER: Okay. Anyway, I mean like  
24 I said, we appreciate what you're trying to do. I

1     certainly feel for the people who live on Lake Drive.  
2     We need another restaurant in town. I mean just be  
3     willing to work, as you say that you are, with those  
4     residents. And I'm not sure what else I could say.

5                 THE CHAIRPERSON: Say anything you want.

6                 UNKNOWN SPEAKER: Well, at this point,  
7     Linda, I guess I'm just speechless.

8                 THE CHAIRPERSON: Well, I think we have a  
9     lot of things to think about. We have an Applicant here  
10    that says they are more than willing to work with the  
11    residents on Lake Drive. And I certainly hope the  
12    residents of Lake Drive are willing to cooperate with a  
13    restaurant that is desperately needed in the town.

14                There's going to be voices, again, coming  
15    from what used to be Norma's Sub Shop and then the cafe,  
16    which was very quiet. We never had a deck, but I know  
17    we had people on their tailgates, eating their subs and  
18    talking during the night. You know, Milton rolls up its  
19    streets pretty early most of the time. I mean most of  
20    the time I go down Mulberry Street about 10:00, and  
21    there's like nothing. It's gone.

22                I certainly hope that everybody is  
23    cooperative with each other to make this work. I like  
24    seeing an outside deck. Frankly, it's going to be too

1 hot in the dead of summer for them to be out there, and  
2 it's going to be too cold come fall for them to be out  
3 there very late. So -- and Milton isn't to the point  
4 yet where we have the Rehoboth foot traffic going by.  
5 So I mean I would be of the opinion voices is going to  
6 be more of an issue. And if you put your music too  
7 loud, then the voices are going to be too loud. And the  
8 voices are definitely going to carry.

9               So I think you are going to definitely be  
10 working at keeping everything at a low decibel. And if  
11 temperatures go like they've been going, they are going  
12 to be inside anyway, so you have climate control. So I  
13 think that you've done all you can do as an Applicant to  
14 say: I'll work with anybody I can work with. And I  
15 hope the residents are going to be willing to say:  
16 We've got a restaurant right down the street we can walk  
17 to. And if they are too loud some night, call up and  
18 say, you know, I want to go to bed, turn your music  
19 down, and that your managers on call are told, you know,  
20 if these residents call, they're down the street. They  
21 know how it's going to be -- (unintelligible).

22               UNKNOWN SPEAKER: They're going to be our  
23 first priority.

24               THE CHAIRPERSON: Right. So, and I mean --

1 UNKNOWN SPEAKER: That's the last person  
2 (unintelligible).

3 THE CHAIRPERSON: I mean I happen to live up  
4 the street. I don't live right on Lake Drive.

5 UNKNOWN SPEAKER: It doesn't make sense for  
6 us.

7 THE CHAIRPERSON: So sometimes my neighbors  
8 have birthday parties that last 24 hours. But you know,  
9 I don't know what else -- yes, they do. I don't know  
10 what else we can do, other than to put a stipulation on  
11 it that we definitely review this in one year. And I  
12 mean that would be one I would like put on there so that  
13 we know if there's been any problems with the sound.  
14 And we definitely want cooperation on each part.

15 So that being said, does anyone else have  
16 anything they would like to say or any questions? And  
17 if not, can we entertain a motion?

18 UNKNOWN SPEAKER: (Unintelligible).

19 MR. BRADY: (Unintelligible) Madam Chair.

20 THE CHAIRPERSON: All we need is a  
21 stipulation, if you want any.

22 UNKNOWN SPEAKER: Madam Chairman, is it in  
23 there that they have to put curb stuff -- before they  
24 get a building permit and stuff, Bob, do they have to

1 put the curb stops in and so on that you mentioned in  
2 the parking lot?

3 MR. KERR: They would not have to do that  
4 before a building permit would be issued. They would --  
5 depending on how -- they would not have to do that  
6 before a building permit would be issued, if you grant  
7 the approval this evening. They would have to -- if  
8 that is part of what you want to see done, you would  
9 have --

10 UNKNOWN SPEAKER: The ordinance requires it,  
11 doesn't it?

12 MR. KERR: Yes. They would have to do that  
13 before a certificate of occupancy could be issued.

14 UNKNOWN SPEAKER: Thank you. I'm interested  
15 in protecting the area over by Governor's Walk and so  
16 on. Thank you.

17 UNKNOWN SPEAKER: Gentlemen, Mr. Kerr, you  
18 said you would be willing to address some of his  
19 proposals, and particularly, number eight -- in  
20 particular, number eight and nine, with the landscaping  
21 and the trash area?

22 UNKNOWN SPEAKER: I'll take care of it. The  
23 trash area you have identified on your drawing that each  
24 of you should have in front of you. They are -- The

1 trash area is located back next to our two walk-ins in  
2 the back of the building, which there will be a six-foot  
3 high privacy fence that runs all the way along the back  
4 side of the property, which is demonstrated on the  
5 drawing.

6 UNKNOWN SPEAKER: And that will be made  
7 of --

8 UNKNOWN SPEAKER: The trash area itself,  
9 which is going to be located within that privacy fence,  
10 will also be fenced in, which is demonstrated by the  
11 square that's drawn around the trash area on that  
12 drawing right there.

13 UNKNOWN SPEAKER: And the fence will be made  
14 of --

15 UNKNOWN SPEAKER: It will be a wood fence.

16 UNKNOWN SPEAKER: Stockade or --

17 UNKNOWN SPEAKER: Probably a cedar or a wood  
18 fence or something --

19 UNKNOWN SPEAKER: Something substantial,  
20 though.

21 UNKNOWN SPEAKER: Oh, yes.

22 UNKNOWN SPEAKER: Not -- it's going to be a  
23 solid fence. It's not going to be a, you know, a  
24 pushover --

1 UNKNOWN SPEAKER: Okay. Thank you. Part of  
2 your car bumping isn't it going make it go (speaker made  
3 a sound).

4 UNKNOWN SPEAKER: No.

5 UNKNOWN SPEAKER: The cars won't --

6 UNKNOWN SPEAKER: It's going to be within  
7 the fence, anyway. If you look at the design, it's  
8 behind the first fence, anyway. So actually, there will  
9 be no access back there --

10 UNKNOWN SPEAKER: Okay.

11 UNKNOWN SPEAKER: -- for any customers or  
12 anyone else.

13 UNKNOWN SPEAKER: Thank you.

14 THE CHAIRPERSON: This fencing is simply on  
15 the property line that used to be the post office.

16 UNKNOWN SPEAKER: Correct.

17 THE CHAIRPERSON: It's not going down behind  
18 the post office. It's just the side.

19 UNKNOWN SPEAKER: It's on the side,  
20 separating the post office from the --

21 UNKNOWN SPEAKER: Yeah.

22 THE CHAIRPERSON: But it's not this back  
23 piece. It's just this side piece next to the building?

24 UNKNOWN SPEAKER: Correct.

1 THE CHAIRPERSON: Yes. Okay.

2 UNKNOWN SPEAKER: Correct.

3 UNKNOWN SPEAKER: There's a small curb that  
4 is --

5 UNKNOWN SPEAKER: No, we don't want to  
6 impede the flow of people being able to move, walk.

7 THE CHAIRPERSON: I'm just making sure it's  
8 just the side of the building and not behind what used  
9 to be the post office?

10 UNKNOWN SPEAKER: Yeah, no, not behind that,  
11 no, no.

12 THE CHAIRPERSON: Okay.

13 UNKNOWN SPEAKER: And then to add to number  
14 eight, the landscaping, I can tell you that the  
15 landscaping on the front is going to be something that  
16 is fairly low maintenance, some grasses, maybe some  
17 yuccas, some type of, you know, kind of maybe --

18 UNKNOWN SPEAKER: Mexican.

19 UNKNOWN SPEAKER: -- whatever we can get  
20 away with in Delaware, as far as warm weather, something  
21 that looks a little Southwestern that lends into our  
22 theme a little bit, but something that is low  
23 maintenance. I mean the last thing -- I mean I  
24 obviously want it to look good. It's in the Town

1 Center, and we understand. But you can do that by  
2 having low maintenance things there that you don't have  
3 to go and, you know --

4 UNKNOWN SPEAKER: Is there going to be a  
5 fence between the restaurant and the house on the corner  
6 that's next to you? In other words, that runs right  
7 here where you have this landscaping?

8 UNKNOWN SPEAKER: As of now --

9 UNKNOWN SPEAKER: No, there's --

10 UNKNOWN SPEAKER: -- Bob has demonstrated  
11 putting some shrubbery up along there that would grow  
12 in, not necessarily a fenced structure, but --

13 UNKNOWN SPEAKER: If it's not shrubs, there  
14 will be -- I mean it's a fence or a shrub. I mean there  
15 will be a wall of some type.

16 UNKNOWN SPEAKER: Okay. To protect them.

17 UNKNOWN SPEAKER: I mean it kind of depends  
18 on, you know, what our landscape architect says or, you  
19 know, what would look good there. But it would be --  
20 there will be a wall of some type, whether it's --

21 UNKNOWN SPEAKER: Okay. To shield them from  
22 the restaurant.

23 UNKNOWN SPEAKER: Sure, uh-huh.

24 UNKNOWN SPEAKER: Okay. Thank you.

1 UNKNOWN SPEAKER: The Town, not this  
2 particular Committee, but the Town itself, I ran into  
3 some trouble with landscaping on a particular  
4 development -- not residential, but commercial -- where  
5 we were promised that certain things would be done. And  
6 yes, things were planted. But the upkeep certainly  
7 wasn't there. The plants weren't watered. The grass  
8 was left to die. And all that is there now is crab  
9 grass, and it's --

10 UNKNOWN SPEAKER: Well, we have more pride  
11 in our business, if you'll allow that to happen.

12 UNKNOWN SPEAKER: (Unintelligible).

13 UNKNOWN SPEAKER: Well, I mean it's a place  
14 that wants to be inviting. I mean you want people to  
15 come in. If I saw a bunch of dead flowers and, you  
16 know, dead trees and bushes, you know, garbage cans,  
17 bottles, whatever, it's not inviting. I mean --

18 UNKNOWN SPEAKER: Could that --

19 UNKNOWN SPEAKER: -- if I go in a facility  
20 and the bathroom is not clean, well, it makes -- it's an  
21 impression. So obviously, we want to make a good  
22 impression.

23 UNKNOWN SPEAKER: Could that be added to the  
24 one-year agreement?

1 MR. BRADY: The one-year condition?

2 UNKNOWN SPEAKER: The one-year condition,  
3 I'm sorry.

4 MR. BRADY: It could be a condition.

5 UNKNOWN SPEAKER: What would be the  
6 condition, though? I would like to hear that, because  
7 that's kind of --

8 UNKNOWN SPEAKER: Landscaping and maintained  
9 in a good condition.

10 UNKNOWN SPEAKER: Maintained. Okay.

11 UNKNOWN SPEAKER: The maintenance.

12 UNKNOWN SPEAKER: My question on that is  
13 because that's -- Is that objective or subjective?

14 UNKNOWN SPEAKER: Right.

15 UNKNOWN SPEAKER: I mean it's --

16 UNKNOWN SPEAKER: You are in the center of  
17 downtown. It's got to look good.

18 UNKNOWN SPEAKER: Oh, no, we want it. We  
19 have pride. I mean we want it to.

20 UNKNOWN SPEAKER: It can't look like the  
21 Food Lion complex.

22 UNKNOWN SPEAKER: Yes.

23 UNKNOWN SPEAKER: I mean it's just sort  
24 of like the decibel meter with the sound. I mean

1       there's -- what constitutes --

2                   UNKNOWN SPEAKER:   Neat, clean, and healthy.

3                   UNKNOWN SPEAKER:   Okay.   There you go.

4                   UNKNOWN SPEAKER:   I want to know --

5                   THE CHAIRPERSON:   Obviously, just maintain  
6       their landscaping.

7                   UNKNOWN SPEAKER:   Everyone's perspective on  
8       that.

9                   UNKNOWN SPEAKER:   Maintain it.

10                  THE CHAIRPERSON:   How about that?   They've  
11       got to maintain their landscaping.

12                  UNKNOWN SPEAKER:   And that's what we expect  
13       you to do.

14                  UNKNOWN SPEAKER:   That's fine.   We will.

15                  THE CHAIRPERSON:   Okay.   We want them to  
16       have no live music past seven p.m.

17                  UNKNOWN SPEAKER:   Outside.

18                  THE CHAIRPERSON:   We want -- what?

19                  UNKNOWN SPEAKER:   Just outside, right?

20                  THE CHAIRPERSON:   Oh, yeah, outside.

21                  UNKNOWN SPEAKER:   Right.

22                  THE CHAIRPERSON:   All right.   Sorry.

23                  UNKNOWN SPEAKER:   On the deck.

24                  THE CHAIRPERSON:   You want them to maintain

1     their landscaping, and you want the application to be  
2     reviewed in one year.

3                 UNKNOWN SPEAKER:   Right.   And speaker music  
4     off at nine p.m., they said.

5                 UNKNOWN SPEAKER:   No, we didn't --

6                 THE CHAIRPERSON:   Yeah, you did.

7                 UNKNOWN SPEAKER:   We said off at nine?  I  
8     said --

9                 THE CHAIRPERSON:   Uh-huh.

10                UNKNOWN SPEAKER:   I said we would turn it  
11    down, the speakers.

12                UNKNOWN SPEAKER:   No.

13                UNKNOWN SPEAKER:   You said off.

14                UNKNOWN SPEAKER:   You said off.

15                UNKNOWN SPEAKER:   Outside.

16                UNKNOWN SPEAKER:   (Unintelligible) because  
17    that will lift the voices of the (unintelligible).

18                THE CHAIRPERSON:   I wrote speakers down at  
19    nine.  That's what I wrote down.

20                UNKNOWN SPEAKER:   Down, down.  I mean that  
21    is --

22                UNKNOWN SPEAKER:   What is down?

23                UNKNOWN SPEAKER:   Yes.

24                UNKNOWN SPEAKER:   They are going to be down

1       anyway.

2                   (Unintelligible).

3                   UNKNOWN SPEAKER:  Then the loud noises,  
4       you've right.

5                   (Unintelligible).

6                   UNKNOWN SPEAKER:  Well, some of this has got  
7       to be worked out in the living of it and can't be --

8                   UNKNOWN SPEAKER:  Well, it kind of flows  
9       into the same thing --

10                  UNKNOWN SPEAKER:  It is a subjective --

11                  UNKNOWN SPEAKER:  You know --

12                  UNKNOWN SPEAKER:  -- matter.

13                  UNKNOWN SPEAKER:  -- a line, you know.  We  
14       want feedback, as far as if that's offensive at that  
15       point.  Like I said, there's another establishment in  
16       town.  I know they turn the music down at 9:00  
17       considerably.  We plan to do the same thing.  They have  
18       not had one problem in town, from what I've talked to  
19       the owner about.

20                  UNKNOWN SPEAKER:  I guess we'll view, you  
21       know --

22                  THE CHAIRPERSON:  Is there anything else  
23       that we want as stipulations?

24                  UNKNOWN SPEAKER:  Counsel, would it be out

1 of line to ask for an as-built, because they are saying  
2 we are going to put this kind of bush and that kind of  
3 tree and everything? Would it be out of line to ask for  
4 one?

5 MR. BRADY: You could put as a condition of  
6 issuing the final -- the certificate of occupancy that  
7 the landscaping, lighting, and signage be the final,  
8 as-constructed version be done before opening, because  
9 you would have that information in place right before  
10 you got your CO.

11 UNKNOWN SPEAKER: And who would review that?

12 MR. BRADY: Oh, it wouldn't -- it would just  
13 come in. You would just file it with the Town.

14 THE CHAIRPERSON: Landscaping, lighting, and  
15 signage, what?

16 MR. BRADY: That the as-built diagram, along  
17 with the issue that came up about the parking, that --  
18 understanding that your final site plan that you are  
19 doing now being approved, that when you are ready to  
20 open, you have everything cast in stone, just sort of  
21 like that snapshot in time. Take a picture or have the  
22 final thing and then file it. That goes in when you  
23 pick up your CO.

24 UNKNOWN SPEAKER: Okay. Now --

1 THE CHAIRPERSON: Would -- Wait a minute.  
2 Would this be okay? Landscaping, lighting, and signage,  
3 as-built diagram before issuance of CO? Is that --

4 UNKNOWN SPEAKER: What the site looks like  
5 when it is being opened?

6 UNKNOWN SPEAKER: And I assume --

7 THE CHAIRPERSON: Okay. I mean --

8 UNKNOWN SPEAKER: -- I mean the architect or  
9 myself are going to be asked as specific as possible to  
10 actually write this is a so-and-so tree or whatever? I  
11 mean that helps. I mean what I've been gathering is the  
12 more specific I can be, the better it is for you guys to  
13 make your vote.

14 UNKNOWN SPEAKER: Absolutely.

15 UNKNOWN SPEAKER: Yes.

16 THE CHAIRPERSON: Well, we wouldn't be  
17 reviewing it. It would be reviewed by the Town Office.

18 (Unintelligible).

19 UNKNOWN SPEAKER: Right, by Robin, or the  
20 four of them.

21 UNKNOWN SPEAKER: Okay. So say --

22 THE CHAIRPERSON: And we need to waive the  
23 parking requirement.

24 MR. BRADY: As part of the condition,

1     because it is in Town Center, there needs to be the  
2     condition that the parking required for this occupancy,  
3     because of it being in Town Center, is being reduced to  
4     the number of spaces as indicated on the as-built  
5     paperwork to be submitted at the time of the CO, because  
6     right now, it was -- you weren't sure exactly how many  
7     spaces were in that lot. That gives you until that time  
8     to say: Okay. But it gives a waiver in there, because  
9     it is in Town Center, and the Town Center parking waiver  
10    is permitted under the ordinance.

11                 UNKNOWN SPEAKER: Are you going to keep the  
12    shed?

13                 UNKNOWN SPEAKER: I would think so, yes.  
14    It's got some equipment that, you know --

15                 UNKNOWN SPEAKER: It has storage space,  
16    which we don't have inside the building.

17                 UNKNOWN SPEAKER: It's a parking lot.

18                 UNKNOWN SPEAKER: We'll see if we can pretty  
19    it up a little bit.

20                 UNKNOWN SPEAKER: Yes.

21                 UNKNOWN SPEAKER: Or clean it up.

22                 UNKNOWN SPEAKER: Or move it back.

23                 UNKNOWN SPEAKER: I don't want it to stand  
24    out too much from the postal place.

1                   THE CHAIRPERSON: Okay. Any other  
2 requirements that you would like added to the  
3 recommendation?

4                   THE CHAIRPERSON: Mature plantings? We  
5 can't do that, Mr. Brady? Or a certain diameter?

6                   UNKNOWN SPEAKER: I do think we are going to  
7 be getting into real trouble if we try to -- I was the  
8 one who said I wanted more specifics on the plan. But,  
9 you know --

10                  UNKNOWN SPEAKER: Well, I think we could say  
11 that the plantings and the grasses in the front have to  
12 be at least a foot and a half high, and the ones on the  
13 side have to create enough screen to protect the  
14 residents on the house on the side.

15                  MR. BRADY: I think you could reference.  
16 7.14.3, planting standards. You will cover your  
17 concerns. Basically, it talks about trees. Actually,  
18 shrubs shall be a minimum of two feet high when measured  
19 immediately after planting. Hedges, when measured,  
20 shall be planted and maintained as to form a continuous  
21 visual screen within two years. So I think that --  
22 Disturbed soil areas from the site shall be replanted or  
23 reseeded.

24                  It's under 7.14.3. I think if they are the

1 concerns, that you could say that the Applicant --

2 THE CHAIRPERSON: Seven --

3 MR. BRADY: 7.14.3 -- shall comply with the  
4 planting standards in that section, because that's what  
5 the ordinance says right now. And so there should be no  
6 problem following --

7 THE CHAIRPERSON: 7.14.3, planting  
8 standards?

9 MR. BRADY: Correct.

10 THE CHAIRPERSON: Correct? Okay. Anything  
11 else?

12 UNKNOWN SPEAKER: Yes, just that the  
13 speakers shall not face Lake Drive, as promised.

14 UNKNOWN SPEAKER: I'm trying to think -- and  
15 I don't know if there would be any way to do this. I  
16 can't see how. But I'm going to bring it up anyway --  
17 some sort of landscape buffer for sound? And I don't  
18 know how you could do it on that property.

19 THE CHAIRPERSON: I don't think we could.

20 UNKNOWN SPEAKER: Unfortunately, where they  
21 live and it's kind of --

22 THE CHAIRPERSON: And you've got to  
23 remember --

24 UNKNOWN SPEAKER: Blocking the view, yeah.

1                   THE CHAIRPERSON: This is an existing  
2 building and lot.

3                   UNKNOWN SPEAKER: Yeah, that's why --

4                   THE CHAIRPERSON: It's not like a brand new  
5 --

6                   UNKNOWN SPEAKER: Right.

7                   UNKNOWN SPEAKER: No, because you could  
8 protect them visually.

9                   THE CHAIRPERSON: Anything else?

10                  UNKNOWN SPEAKER: That can be reviewed in a  
11 year, right?

12                  THE CHAIRPERSON: Uh-huh, I got it on here.

13                  UNKNOWN SPEAKER: Okay.

14                  THE CHAIRPERSON: Okay.

15                  UNKNOWN SPEAKER: Linda, I just want to try  
16 to make this a win-win situation --

17                  THE CHAIRPERSON: Oh, sure.

18                  UNKNOWN SPEAKER: -- for all the parties.

19                  THE CHAIRPERSON: So here is the  
20 stipulations I got before we go into a motion. Okay?  
21 Let's see if everything -- if everybody's got what they  
22 want. No live music past seven p.m. outside; speakers  
23 lowered in volume or off by nine p.m.; speakers not to  
24 face Lake Drive; maintain landscaping; landscape,

1     lighting and signage, as-built diagram before issuance  
2     of CO; waiving of parking requirement, which will be a  
3     reduction; application should be reviewed in one year;  
4     and section 7.14.3 of --

5                 MR. BRADY:   Zoning ordinance regarding --

6                 UNKNOWN SPEAKER:   Zoning ordinance --

7                 THE CHAIRPERSON:   Planting.

8                 MR. BRADY:   Planting.

9                 UNKNOWN SPEAKER:   Planting.

10                UNKNOWN SPEAKER:   Planting standards.

11                UNKNOWN SPEAKER:   Right, because I remember  
12     we passed the special use last month so they could do  
13     their thing, but it was conditional upon their coming up  
14     with this stuff.

15                THE CHAIRPERSON:   Okay.   So has that got  
16     everything that everybody wants and feels comfortable  
17     with and is it things that you all feel you can live  
18     with and we will be good to go and have some food?  
19     Okay.

20                UNKNOWN SPEAKER:   One more thing, Linda,  
21     please.

22                UNKNOWN SPEAKER:   The food had better be  
23     good.

24                MR. BRADY:   That can't be part of it.

1 UNKNOWN SPEAKER: The deck and the music on  
2 the deck, could we set a stipulation that the music be  
3 turned off at a certain hour?

4 THE CHAIRPERSON: I have speakers lowered in  
5 volume or off by nine p.m.

6 UNKNOWN SPEAKER: And live music -- no live  
7 music after seven.

8 UNKNOWN SPEAKER: After seven.

9 UNKNOWN SPEAKER: Outside.

10 UNKNOWN SPEAKER: That's --

11 THE CHAIRPERSON: Outside.

12 UNKNOWN SPEAKER: That's about as --

13 UNKNOWN SPEAKER: And good sangria.

14 UNKNOWN SPEAKER: That's about --

15 UNKNOWN SPEAKER: And the --

16 UNKNOWN SPEAKER: That's about as specific  
17 as you can get.

18 UNKNOWN SPEAKER: Will the deck be open  
19 until -- for alcohol consumption until 1:00 a.m.?

20 UNKNOWN SPEAKER: There won't be a bar out  
21 there. I would encourage someone, if they want to smoke  
22 and they want to bring their beer bottle --

23 UNKNOWN SPEAKER: Absolutely.

24 UNKNOWN SPEAKER: -- or drink outside --

1 UNKNOWN SPEAKER: Absolutely.

2 UNKNOWN SPEAKER: -- go right ahead. I mean  
3 there will be garbage receptacles out there. What we  
4 don't want is people -- we will be monitoring people  
5 going off the deck, because obviously, we are held  
6 responsible for them.

7 UNKNOWN SPEAKER: Correct.

8 UNKNOWN SPEAKER: We can serve alcoholic  
9 beverages, but we don't want them trespassing around  
10 Town as a quote, unquote (unintelligible).

11 UNKNOWN SPEAKER: Absolutely. Counsel?

12 MR. BRADY: Yes.

13 UNKNOWN SPEAKER: Aren't they required to  
14 close by 1:00?

15 UNKNOWN SPEAKER: Yes.

16 MR. BRADY: They are required to close at  
17 1:00. They have to have the last call at 12:50. And  
18 they are required to comply with all the ABCC licensing,  
19 so --

20 UNKNOWN SPEAKER: We have all the licensing.

21 MR. BRADY: Right.

22 UNKNOWN SPEAKER: There you go.

23 UNKNOWN SPEAKER: Linda, on your parking  
24 condition, was it also the information to be submitted

1 with the --

2 MR. BRADY: The parking lot, I think, is --

3 THE CHAIRPERSON: What do you want me to put  
4 on here?

5 UNKNOWN SPEAKER: It basically would also be  
6 part of the as-built --

7 UNKNOWN SPEAKER: The as-built.

8 UNKNOWN SPEAKER: -- so that you know how  
9 many parking places are being provided at that time.

10 UNKNOWN SPEAKER: Another thing that I  
11 thought of was parking on Lake Drive for your patrons.

12 THE CHAIRPERSON: No parking on Lake Drive.

13 UNKNOWN SPEAKER: That was --

14 UNKNOWN SPEAKER: They can't enforce that.

15 UNKNOWN SPEAKER: They can't --

16 THE CHAIRPERSON: And the only way that can  
17 be enforced would be if the residents of Lake Drive --

18 UNKNOWN SPEAKER: Yes.

19 THE CHAIRPERSON: -- asked for the Town to  
20 specifically put up No Parking signs.

21 UNKNOWN SPEAKER: Right.

22 THE CHAIRPERSON: That's the only way it can  
23 be avoided, because they can't go out there and police  
24 parking off premises.

1 UNKNOWN SPEAKER: Right.

2 THE CHAIRPERSON: But we can -- We can't do  
3 it at all, can we? No, we can't.

4 UNKNOWN SPEAKER: No. And there is a  
5 Streets & Signs Committee that you can go to, too.  
6 (Unintelligible).

7 UNKNOWN SPEAKER: Residents won't be able to  
8 park in there.

9 THE CHAIRPERSON: Okay.

10 UNKNOWN SPEAKER: Then I make a motion,  
11 please.

12 UNKNOWN SPEAKER: Someone can make a motion.

13 UNKNOWN SPEAKER: What did you say? I'm  
14 sorry.

15 UNKNOWN SPEAKER: I wanted to make a motion,  
16 and people were talking. I -- now that this thing is  
17 actually longer than Moby Dick, I would like to try to  
18 read it.

19 I make a motion to grant final site plan  
20 approval for construction of an exterior deck and  
21 covered gazebo with the following conditions: One, no  
22 live music past seven p.m. outside -- excuse me -- one  
23 B, speakers lowered in volume or off by nine p.m.; one  
24 C, speakers not to face Lake Drive; two, to maintain --

1     that you maintain your landscaping; three, that  
2     landscaping, lighting, and signage reference the as-  
3     built diagram before issuance of a CO; four, waive  
4     parking requirement to be included in the as-built;  
5     five, application to be reviewed in one year; six, in  
6     the zoning ordinance number 7.14.3, that the planting  
7     standards there be followed.

8             THE CHAIRPERSON:   Is there a second?

9             UNKNOWN SPEAKER:   One more thing --

10            UNKNOWN SPEAKER:   Second.

11            UNKNOWN SPEAKER:   We did speak -- and it  
12     didn't get on the list -- the curb stops along  
13     Governor's Walk for the cars, bumps, so that cars can't  
14     drive onto the walk or onto the grass.

15            UNKNOWN SPEAKER:   Can I get a copy of that  
16     sometime this week?

17            MR. DAVIS:   Yes.

18            UNKNOWN SPEAKER:   Just see Robin.

19            UNKNOWN SPEAKER:   All right.

20            MR. DAVIS:   I'll have to send it to you.  
21     I'll send it to Bob (unintelligible).

22            UNKNOWN SPEAKER:   So additionally, that the  
23     car or curb stops be put in as we've --

24            UNKNOWN SPEAKER:   On Governor's Walk.

1 UNKNOWN SPEAKER: Yes.

2 THE CHAIRPERSON: Okay. Is there a second  
3 to that motion?

4 UNKNOWN SPEAKER: Second.

5 THE CHAIRPERSON: All in favor by roll call  
6 vote.

7 UNKNOWN SPEAKER: Aye.

8 UNKNOWN SPEAKER: Aye.

9 THE CHAIRPERSON: Aye.

10 UNKNOWN SPEAKER: Aye.

11 UNKNOWN SPEAKER: Aye.

12 UNKNOWN SPEAKER: Aye.

13 UNKNOWN SPEAKER: Aye.

14 THE CHAIRPERSON: Motion carried. Is there  
15 anything else? If not, we'll entertain a motion to  
16 adjourn.

17 UNKNOWN SPEAKER: So moved.

18 UNKNOWN SPEAKER: So moved.

19 UNKNOWN SPEAKER: Mr. Brady, can I ask one  
20 question? It was brought up tonight that there is a  
21 house on Clifton street that is housing -- they have  
22 apartments, and people are living there from Casa San  
23 Francisco. Could we ask the code enforcement officer --  
24

1 State of Delaware )  
2 Kent County )

3

4

5 CERTIFICATE OF REPORTER

6 I, Cheryl A. Anthony, Delaware Certified Shorthand  
7 Reporter and Notary Public, do hereby certify that the  
8 foregoing record, pages 1 to 110 inclusive, is a true  
9 and accurate transcript, to the best of my ability, of  
10 my stenographic notes from the tape-recording of  
11 February 20, 2007, in the above-captioned matter.

12

13

14

15 \_\_\_\_\_  
Cheryl A. Anthony  
16 Delaware CSR  
Certification No. 107-PS  
17 (Permanent Certification)

18

19 DATED: \_\_\_\_\_

20

21

22

23

24